Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

APPARAJAN GANESAN,
Petitioner,

v.

UNITED STATES ATTORNEY,
UNITED STATES STATE DEPARTMENT,
INTERNAL REVENUE SERVICE,
BUREAU OF IMMIGRATION AND CUSTOMS
ENFORCEMENT,
Respondents.

On Petition For Writ Of Certiorari to the United States Court of Appeals For the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Apparajan Ganesan
Pro Se
TDCJ #904088
Sanders Estes Unit
1100 Hwy. 1807
Venus, TX 76084

June 3, 2004

QUESTIONS PRESENTED

In the case, the United States Court of Appeals for the Fifth Circuit held that a duty to perform on the part of the Attorney General does not equate to a duty owed to citizen Ganesan and that the judiciary cannot interfere with the discretion of the U.S. Attorney in prosecutions. Since citizen Ganesan has no alternative but to seek help of Federal agencies when fraud is perpetrated by an alien, the questions presented are:

Was the U.S. District Court correct in denying a Writ of Mandamus in this case under the principles of res judicata or preclusion?

Was the 5th Circuit Court correct in denying a Writ of Mandamus in this case under the principle of prosecutorial discretion, particularly when Ganesan's life and property were destroyed and the Federal agencies were well informed of the alien's actions before that damage was done?

Was the 5th Circuit Court correct in denying a Writ of Mandamus claiming no duty was owed to Ganesan?

LIST OF PARTIES

Pursuant to Supreme Court Rule 24.1(b), the following list identifies all of the parties before the United States Court of Appeals for the Fifth Circuit.

Apparajan Ganesan was the Appellant below. The United States Attorney, the United States State Department, the Internal Revenue Service, and the Bureau of Immigration and Customs Enforcement were the Appellees below.

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   Immigration:
   8 U.S.C.A. § 1227 (a)(3)(B)(iii)
   8 U.S.C.A. § 1227 (a)(3)(C)(i)
   18 U.S.C.A. § 1015
   18 U.S.C.A. § 1546
   Tax:
   18 U.S.C.A. § 286
   18 U.S.C.A. § 287
   26 U.S.C.A. § 7201, 7203, 7205, 7206, 7207
   Other:
   18 U.S.C.A. § 152
   18 U.S.C.A. § 1035
   18 U.S.C.A. § 1542
5. Title 5, Administrative Procedure Act APA, U.S.C. § 702 15,16
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RELATED TEXAS AND FEDERAL CASES

Cases 1-2 are the instant case resulting from USDC bifurcation of a mandamus request from the fraud action.

Cases 3-9 are the original case, where 3 and 4 are a bifurcation of the common law marriage from the divorce settlement.

Case 10 is the bankruptcy case caused by actions directly associated with the fraud by Vallabhaneni.

Cases 11-17 are for the solicitation of murder charge that resulted from alleged acts stemming from the common law marriage case and its resulting bankruptcy. Case 15 is a bail request; case 16 is the alleged offense.

	Court	Judge	Case No.
1.	US District Court Western Dist. of Texas, Austin	James Nowlin	03-CA-00030
2.	5th Circuit Court	Dineen King, Garza, Benavides	03-50519
3.	250th Jud. Dist. Travis County, TX	John Dietz	96-14089
4.	353rd District Court, Travis County, TX	Margaret Cooper	96-14089
5.	Texas Court of Appeals, 3rd Dist., Austin	Marilyn Aboussie, Yeakel, Puryear	03-01-288CV 96 S.W.3d 345
6.	Texas Sup. Court	no published opin	02-0520
7.	US District Court Western Dist. of Texas, Austin	James Nowlin	02-CA-00614
8.	5th Circuit Court	Dineen King,	03-50193

		Jolly, Stewart	
9.	U.S. Supreme Court, Writ of Certiorari (for 5th Cir Case No. 03-50193), filed Mar. 24, 2004	Denied 6/1/2004	03-1383
10.	US Bankruptcy Ct., Western District of Texas, Austin	Frank Munroe	No. 98-10295 FRM
11.	390th Judicial Dist. Court, Travis County, Texas	Julie H. Kocurek	995324-A
12.	County Court III, Travis County, Texas	David Crain	492428
13.	Texas Court of Appeals, 3rd Dist., Austin	Kidd, Yeakel	03-00-125-CR 45 S.W.3d 197
14.	US District Court Western Dist. of Texas, Austin	James Nowlin, Stephen H. Capelle (Magistrate)	02-CA-00753
15.	5th Circuit Court	Edith Brown Clement, Davis, Duhe	03-50801
16.	5th Circuit Court	Jolly, Wiener, Pickering	03-51120
17.	U.S. Supreme Court, Writ of Certiorari (for 5th Cir. Case No. 0-51120), mailed May 26, 2004		not yet docketed

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OPINIONS BELOW

The decisions of the United States Court of Appeals for the Fifth Circuit are reprinted at Appendix 1A-18A. The decisions of the United States District Court for the Western District of Texas are reprinted at Appendix 1B-4B. Petitioner noted that in the Writ of Certiorari for Ganesan v. Vallabhaneni, et al, previously filed (03-1383), US District Court chose to separate that case from the instant case, although both had the same background and evidentiary basis.

JURISDICTION

The judgment of the Court of Appeals was entered Jan., 12, 2004. A timely petition for rehearing was denied Mar. 18, 2004. This Court has jurisdiction pursuant to 28 USC § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First, Fifth, and Fourteenth Amendments to the United States Constitution, which provide in relevant parts as follows:

Amendment I: Congress shall make no law ... abridging the freedom of speech, ... or the right of the people ... to petition the Government for a redress of grievances.

Amendment V: No person shall ... be deprived of life, liberty, or property, without due process of law; ....

Amendment XIV, Section 1: No State shall make or enforce any law which shall abridge the privileges or

immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case involves the provisions of 28 USC § 1331, "Action to compel an officer of the United States to perform his duty," which provides as follows:

> The District Courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

This case also involves other federal statutes, i.e. immigration: 8 U.S.C.A. §1227 (a)(3)(B)(iii), 8 U.S.C.A. §1227 (a)(3)(C)(i), 18 U.S.C.A. § 1015, 18 U.S.C.A. § 1546; tax: 18 U.S.C.A. § 286, 18 U.S.C.A. § 287, 26 U.S.C.A. § 7201, 7203, 7205, 7206, 7207; and others: 18 U.S.C.A. § 152, 18 U.S.C.A. § 1035, 18 U.S.C.A. § 1542, reprinted in Appendix H.

STATEMENT OF THE CASE

A. Background

Apparajan Ganesan is a US citizen and an Electronics Engineer who has made considerable contribution to the public good (for example, work on closed captioning for the deaf, US Patent 5,404,172). Sudha Vallabhaneni is a resident alien (Green Card # A 07 077 8592) of Indian citizenship (Passport No.: X725213 new; U839285 old; Social Security # 587-63-8054) and a Computer Engineer.

In September, 1994, Apparajan Ganesan (a citizen of the United States) and Sudha Vallabhaneni (a citizen of the

country of India) made contact. Subsequently, Vallabhaneni moved to Austin, Texas, and cohabitation with Ganesan began in February, 1995. Over the next 18 months, the two discussed marriage, and declared to being unmarried on both Federal income tax forms. Vallabhaneni filed numerous Federal (including immigration), State, and other documents (including passport documents filed with the Indian consulate) on which she consistently declared herself to be single (see Appendix E for chronology). She also declared herself as single to her employer, thus prohibiting Ganesan from obtaining any health benefits from that employer. There were several separations and reconciliations during this period. In September, 1996, Vallabhaneni permanently moved out, and immediately filed for a declaration of a Common Law Marriage beginning Sep. 1994 and a divorce as of Sep. 1996. Ganesan contested the claim of marriage.

No children resulted from this cohabitation.

Through a state district court order, Ganesan compelled Vallabhaneni to provide federal and state income tax returns in which she declared herself to be single. Ganesan obtained state court orders to procure declarations made by Vallabhaneni in her passport renewal forms in June 1996 (just before end of cohabitation) where she declared herself to be single. Ganesan contacted Indian Consulate General in Houston, who confirmed Vallabhaneni's declaration as "single" but who refused to release the documents to court claiming "sovereign independence." Ganesan sought help from US State Department in Washington and in Houston to compel Indian consulate to release documents. State Department cited sensitive nature of on-going negotiations with India as reasons for not helping Ganesan. I.N.S. agent refused to testify in state court jury trial, but Ganesan obtained state court subpoena for I.N.S. agent Reyes to

testify. Reyes confirmed Vallabhaneni's status as "single." He also testified Vallabhaneni never filed a change of marital status form with I.N.S., which all aliens are **required** to do. Ganesan met with I.R.S. Problem Solving Team including Southern Region Chief and head of Criminal Investigation Division. The team appointed a single point of contact, and they agreed with Ganesan that Vallabhaneni did commit fraud, but contended that the recoverable assets were too small for them to take direct action. They agreed to pass the information to the I.N.S. (now Bureau of Immigration and Customs Enforcement [BICE]). Ganesan and his attorney made numerous contacts (phone, fax, in person) with Mr. Greg Ball, district counsel for BICE. Mr. Ball informed Ganesan that his (Mr. Ball's) Congressional priorities were cross-border immigration issues, and he suggested Mr. Ganesan exhaust all judicial remedy through state and federal courts before asking federal agencies to intervene. Ganesan informed Mr. Ball of imminent bankruptcy due to Ms. Vallabhaneni's actions, but Mr. Ball said he was not able to help, adding "I hope some judge does the right thing before we get dragged into this mess."

Mr. Alvis and another attorney for Ganesan, Bill McNeal, called and wrote repeatedly to US Attorney's office and to BICE asking for action, without success. Ganesan sought help of his Congressional representatives. Senator Kay Bailey Hutchinson's office sent e-mail to BICE requesting they take "appropriate action." Ganesan followed up with letters to the US Attorney, several congressional representatives, the Hon. Judge Micheal Creppy, etc. As per the advice of Mr. Ball, Ganesan exhausted his state and federal remedies. At each stage of the proceedings, Ganesan's attorney notified Vallabhaneni and her attorney. Finally, Ganesan's caretaker, Mr. Douglas G. Marsh, sought via phone and letters to get action but got no response. By

failing to deal with foreign national Vallabhaneni in a timely way, federal agencies involved, including BICE, failed to protect U. S. citizen Ganesan.

Ganesan has documented (Appendix F) some of the 'extraordinary efforts' he and his attorneys have made over a seven year period to inform and seek help from the US Attorney's office, Bureau of Immigration and Customs Enforcement (BICE), the Internal Revenue Service (I.R.S.), the US State Department and their criminal investigation divisions. Ganesan followed exactly the instructions of Mr. Greg Ball, District Counsel of BICE in San Antonio, TX, and the Chief of the Southern Division of the I.R.S. Both of them directed him to exhaust all his state and federal judicial remedies *before* seeking affirmative action from the federal agencies. One of them stated, "I hope some judge does the right thing before we get involved in this mess."

B. The Common Law Marriage Civil Trial

In the resulting civil trial, beginning Sept.8, 1997, in the 353rd Judicial District, Travis County, Texas, Cause No. 96-14089, several potential jurors excused themselves affirming that Texas Common Law Marriage statutes were a **gentrification of "shacking up"** and fundamentally conflicts with their religious beliefs on what constitutes marriage. Ganesan echoes their sentiments: Texas violated his First Amendment rights of free exercise of religion. Vallabhaneni did not contest that she had declared herself to be single on numerous federal and non-federal documents during the period of cohabitation. A representative of the Immigration and Naturalization Service (now the Bureau of Immigration and Customs Enforcement [BICE]) produced immigration documents showing she declared herself to be single contemporaneously (Appendix F, pages 4F-8F) and testified

as to the importance BICE places on aliens keeping BICE updated regarding marital status (Appendix F, pages 9F-22F). A letter from Vallabhaneni's mother proposing a May 1995 marriage was presented for entry as evidence that Vallabhaneni had not mentioned this alleged common law arrangement to her own mother. The letter, however, was not allowed as evidence.

Jury determined there was a common law marriage, from February 23, 1995 and an Interlocutory Judgment confirming common law marriage was signed by State District Judge, the Honorable John Dietz, January 20, 1998.

C. State Post Trail Proceedings

Ganesan timely appealed the Common Law Marriage declaration to the Texas Court of Appeals, 3rd District, at Austin, 03-01-00288-CV (Appendix D, pages 36D-40D). The State District Court ruling was affirmed, March 21, 2002 by State Appellate Judges, Chief Justice Marilyn Aboussie and Justices Yeakel and Puryear (Appendix D, pages 1D-17D). On July 22, 2002, Ganesan filed a petition for review in the Supreme Court of Texas, Cause No. 02-0520, and the petition was denied August 29, 2002 (Appendix C).

Ganesan did not raise the issue of the constitutionality of the Texas common law marriage statute in the state proceedings. He did attempt (per the advice of BICE) without success to overturn the erroneous state court verdict.

D. Federal Post Trial Proceedings

Ganesan filed in U.S. District Court, Western District of Texas, on Sep. 24, 2002 for a ruling on the constitutionality of the Texas Common Law Marriage. He also named the

BICE for its failure to prosecute Vallabhaneni for her multitude of fraudulent claims of being single on numerous legally binding documents, including Federal and State ones, while contemporaneously claiming to be married in a Texas court action. Ganesan had notified BICE and other Federal agencies 6-9 months prior to the state court common law marriage trial of these fraudulent claims.

On January 14, 2003, Ganesan asked the U.S. District Court to allow him to add U.S. Attorney, The U.S. State Department, and the U.S. Internal Revenue Service to the above case, and he filed *In Re Apparajan Ganesan* (Appendix I) as part of this request. He requested a Writ of Mandamus be issued ordering the Federal agencies to take appropriate legal action against Vallabhaneni for her fraudulent claims of declaring herself single on numerous documents including Federal tax and immigration forms while contemporaneously claiming to be in a common law marriage (see Appendices E and F). Most states courts have repeatedly noted that common law marriage claims are fruitful sources of perjury and fraud (see recently, *PNC Bank Corporation v. Worker's Compensation Appeal Board (Stamos)*, 860 C.D. 2002 citing *Staudemayer v. Staudenmayer*, 714 A.2d 1016, 552 PA 253 8,9,12). The District Court chose to make that filing a separate case, and it became the instant case.

On Jan. 28, 2003, the District Court dismissed the original case against Vallabhaneni and BICE for lack of subject matter jurisdiction, citing the Rooker-Feldman doctrine as baring them from reviewing a state court decision. The District Court did not address the constitutionality of the Texas Common Law Marriage statute. An appeal to the 5th Circuit was denied Oct. 22, 2002, citing Rooker-Feldman but without comment on the question of the

constitutionality of the Texas Common Law statute and without comment on the issues related to the BICE. Ganesan filed a Writ of Certiorari questioning the constitutionality of the Texas Common Law statute on March 24, 2004, and this was denied on Junel, 2004, essentially affirming that Vallabhaneni had lied to federal agencies when she claimed to them to be single.

On April 24, 2003, the District Court dismissed the instant case, claiming it was an attempt to re-litigate issues from the original case, even though it was that very same District Court that had decided to separate the issues into two cases! Ganesan's Notice of Appeal to the 5th Circuit Court of Appeals was entered May 8, 2003. On June 30, 2003, Ganesan filed a motion to consider both the common law marriage and the mandamus cases together. He also requested, in the interests of judicial efficiency, to stay these proceedings until the District Court ruled on his solicitation of murder conviction, and if the District Court found against him, the 5th Circuit Court could consider all three cases at one time. This motion was denied by a CLERK order on July 21, 2003. Ganesan's Appellate Brief was filed August 8, 2003, and the 5th Circuit denied it on Jan. 12, 2004 citing lack of duty to be performed and prosecutorial discretion. A request for panel rehearing was filed (Appendix J), and it was denied Mar. 18, 2004.

SUMMARY OF ARGUMENT

The U.S. District Court determined that this case should be separated from Ganesan's suit for fraud (making the instant case USDC No. 03-50519). USDC then proceeded to dismiss the case as an attempt to re-litigate the issues from the original suit.

Absent timely action by responsible federal agencies, Ganesan (or and US citizen similarly placed) suffered irreparable harm. No other remedy at law is available when an alien commits marital fraud by contradicting declarations sworn to federal agencies.

The typical citizen, when his house is on fire, calls the fire department. He does not consider that an obligation to fight fires on the fire chief's part might not translate to an obligation to fight the fire in his house. He does not expect that a fire chief would not act while the house burns. The same argument extends to the police and other emergency services based on "duty is not owed to him."

In this case, an alien and her attorney cooked up a fraudulent claim of common law marriage. The alien, in the documents most precious to her – immigration, passport, visa, tax returns, insurance, and health care – contemporaneously declares her marital status as "single." When a tax paying citizen then asks the responsible federal agencies to take timely action so that he will not be ruined, the question of whether a duty is owed to him is the last thing he is likely to think about. To so declare suggests that the federal agencies never owe any duty to anyone. The district courts in general and the 5th Circuit Court in particular seem to be lost in some ethereal space and have lost touch with reality and responsibility. Citizens have some expectation for there tax dollars and for what Congress intends – affirmative enforcement of federal laws. The need for mandamus to issue becomes a certainty, particularly when courts have repeatedly opined common law marriage claims are "fruitful sources of perjury and fraud" (*PNC Bank Corporation v. Worker's Compensation Appeal Board (Stamos)*, 860 C.D. 2002 citing *Staudemayer v. Staudenmayer*, 714 A.2d 1016, 552 PA 253).

WHY WRIT SHOULD BE GRANTED

A. The 5th Circuit Court was incorrect in denying a Writ of Mandamus claiming a duty is not owed to Ganesan.

When the right alleged stems from a statute, a duty is owed to the plaintiff of the mandamus action if – but only if – the plaintiff falls within the "zone of interest" of the underlying statute. The "zone of interest" is articulated by the Supreme Court in *Clarke v. Securities Industry Ass'n*,. 479 US 388, 396-400, 107 S.Ct. 750, 755-757,

> The 'zone of interest' test is a guide for deciding whether, in view of Congress', evident interest to make agency action presumably reviewable, a particular plaintiff should be heard to complain of a particular agency decision. In case where the plaintiff itself is not the subject of the contested regulatory action, the test denies a right of review if the plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit that suit. The test is not meant to be especially demanding; in particular there (need) be no indication of Congressional purpose to benefit the would-be plaintiff.

The Supreme Court opined in *Association of Data Processing Service Org., Inc. v. Camp,* 397 US at 150, 90 S.Ct. at 829 that "the interests sought to be protected by the complainant ... arguably [be] within the zone of interest to be protected or regulated by the statute or constitutional guarantee in question."

The 5th Circuit opined that a duty is imposed on the Attorney General to deport criminal aliens, it stopped short of concluding that this creates a duty owed to the alien (*Giddings v. Chandler*, 979 F.2d 1104, 1110 [5th Circuit]). *Alvidres-Reyes v. Reno,* 180 F.3d 199 is just the court confirming this opinion. The thinking was to prevent convicted aliens from escaping "doing time" in this country by compelling the Attorney General to send them back to their own country as soon as possible where they might gain freedom immediately by manipulating the justice system in their own country. Essentially, the verdict allows the Attorney General to delay deportation until after the alien serves the US sentence or is about to be released on parole. Given this context, applying this narrow exemption to allow the tardiness of federal agencies in the instant case is a gross misrepresentation of the congressional intent. In *Reno v. American Arab Committee*, 119 S.Ct 936, 943, Supreme Court opined that discretion limitations are offered narrowly to prevent prolongation of removal proceedings. Further, Court clearly opined that it is restricting such discretion to those three issues. The "zone of interest" applies, and Ganesan is resoundingly eligible. Further, "There is sound reason to infer Congress intended [petitioner's] class [of plaintiffs] to be relied upon to challenge agency disregard of the law" (*Block v. Community Nutrition Institute,* 467 US 340, 347; 104 S.Ct 2450, 2454). Nor is there any indication of the kind presented in that case (467 US 340, 347) that make "fairly discernable" a congressional intent to preclude review at petitioner's behest.

In Nov. 2002, Ganesan filed an action of fraud in the Federal District Court (02-CA-614-JN), and then, only as a last resort, he filed the Writ of Mandamus petition against the Federal agencies involved. Ganesan easily met the direction to exhaust all judicial remedies: seven years in five courts,

lost his life savings in excess of $2 million, lost business opportunities valued at close to a billion dollars, got incarcerated for five years and counting, due to malicious prosecution (seven of eight counts were dismissed with the eighth on writ before the same US District Court). There are no other legal options other than the Mandamus remaining for him.

Ganesan notes for the record that there never has been any dispute on the issue of Vallabhaneni's fraudulent violation of over one dozen federal statutes (Appendix H). Ganesan's request that US District Court order responsible Federal agencies to provide the Court with information they had on Ms. Vallabhaneni and her daughter from a previous marriage, Deepika Pavaluri, was not honored.

Mandamus must be issued to clear abuse of discretion or violation of duty by law. The 5th Circuit Court has forgotten that Mandamus may issue to clear abuse of discretion. "While it is true that the Writ of Mandamus is chiefly used to compel the performance of ministerial duty, it also is employed to compel action when refused in matters involving judgment and discretion" (*Idaho Waterhouse Project v. Hahn*, 307 F.3d 815 citing *Miguel v. McCard*, 291 US 442, 451 and Federal Procedures, Lawyers' Edition § 20:662 (1992 and Supp. 2001). Further, federal Mandamus relief is not granted as a right but as a matter of judicial discretion" (*In Re Occidental Petroleum*, 217 F.3d 293, 295-297; *US v. Denson*, 603 F.2d 1143; *Miller v. Heckler*, 601 F.Supp. 1471, 1485; *Alford v. Sullivan*, 751 F.Supp. 1232). Clearly, a duty to act was owed to Ganesan.

Without the threat of Federal action and the resulting deterrent effects, there is nothing to stop Vallabhaneni and other aliens from coming to this country and indulging in

federally illegal actions as part of "get rich quick" schemes. Ganesan came to the US as a legal immigrant with no money, but he can identify the sweat and tears he has legally expended for every dollar he earned. He believes honest, tax paying citizens (he has paid millions of dollars in federal taxes) should get some form of protection from the responsible agencies his tax dollars help to fund. The federal agencies owed him a duty.

The US Attorney who represented the I.RS. questioned Ganesan's right to a private cause of action. Ganesan responded noting the distinction between two kinds of suits from private parties on governmental agencies. One kind requests the use of public funds to make reparations for the past. While "sovereign immunity" applies to private parties seeking to impose a liability which must be paid from public funds (barred by the Eleventh Amendment [*Edelman v. Jordan*, 94 S.Ct 1347, 1348, 1355-1357]), the other kind – which Ganesan is pursuing – is a citizen asking the government to take affirmative action by enforcing the laws on the books (*Edelman v. Jordan*, 415 US 651, 663). To date, Ganesan has not sought any monetary damages from any Federal agency. Therefore, a duty is owed to Ganesan.

"It is the duty of courts to be alert to provide such remedies as are necessary to make effective the Congressional purpose" in *J. J. Case Co. v. Borak*, 84 S.Ct 1555, 1560, 377 US 426, 433. When enforcement scheme fails to adequately protect intended beneficiaries it is duty of courts to imply cause of action to effectuate legislative purposes. Again, a duty owed to Ganesan is clear.

Per *Cort v. Ash*, 95 S.Ct 2080, 2088, 422 US 66, 78, 82.
Provision of a criminal penalty does not preclude implication of a private cause of action for damages

> and may provide a statutory basis for inferring that a civil cause of action of sort lay in favor of someone....
>
> In situations where that federal law has granted a class of persons certain rights, it is not necessary to show an intention to create a private cause of action for one to be implied, though as explicit purpose to deny such a cause of action would be controlling.

Whether a federal statute gives rise to an implied private right of action is determined by the four factor test set forth in *Cort v. Ash*, 95 S.Ct 2080, 2088, 422 US 66, 78:

> 1. Whether plaintiff belongs to a class of persons for whose special benefit the statute was enacted? *In the instant case, the statutes involved (passport, visa, bankruptcy, immigration, federal taxes, etc.) were clearly enacted by Congress to protect US citizenry. Plaintiff Ganesan is a US citizen; Vallabhaneni is a resident alien.*
> 2. Is there any indication of legislative intent explicit or implicit either to create such a remedy or deny one? *There is nothing in the statutes that explicitly preclude a private cause of action; the intent of the statutes is, unequivocally to protect US citizens from fraudulent conduct by aliens. Ganesan has suffered serious and significant harm through Vallabhaneni's fraud, and it is the duty of the courts to provide the necessary remedies to make effective the Congressional intent. The legislature clearly intended a duty to Ganesan.*
> 3. Is it consistent with the underlying purpose of the legislative scheme to imply such a remedy for the plaintiff? *The underlying purpose of the legislative*

scheme was to protect the US citizenry from fraud. When such fraud results in serious and severe harm, and when such direct cause of action is the "last resort" left, such action is consistent with the legislative scheme. Absent such direct cause of action, such "fraud" would go "unpunished," which is clearly counter to Congressional intent.

4. Is the cause of action one traditionally relegated to state law, in an area basically the concern of the states, so that it would be inappropriate to infer a cause of action based on federal law? *Passport and visa fraud, immigration fraud, bankruptcy fraud, federal tax fraud, and sham marriage by an alien are areas basically the concern of the federal government and are overwhelmingly litigated in federal courts.*

It is unquestioned that Congress did not intend to harm citizenry due to agency's arbitrary enforcement. Alien Vallabhaneni violated over twelve federal statutes and caused immense harm to US citizen Ganesan. It is frivolous to argue that Congress did not intend to protect the citizenry through the law and its affirmative enforcement by responsible Federal agencies. If that were the case, the very existence of those agencies is meaningless. A duty is owed to Ganesan.

B. The 5th Circuit Court was incorrect in denying a Writ of Mandamus using the principle of discretion of prosecutor.

The appellants argued the Attorney General enjoys sovereign immunity from being compelled to do anything. Title 5, Administrative Procedure Act APA, U.S.C. § 702 from *Smith v. Booth*, 823 F.2d 94, 97:

> A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency

> action within the meaning of a relevant statute is entitled to judicial review thereof. An action in a court of the United States seeking relief other than monetary damages and stating a claim that an agency or office or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed or relief therein be denied on the ground that it is against the United States or the United States is an indispensable party. The United States may be named as a defendant in any such action and a judgment or decree may be entered against the United States, provided that any mandatory or injunctive decree shall specify the federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitation on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or implied forbids the relief which is sought.

"The 1976 amendment to the [Title 5 U.S.C. §702] statute waives sovereign immunity for actions against federal government agencies when seeking non-monetary relief, if agency conduct is otherwise subject to judicial review" in *Sheehan v. Army and Airforce Exchange Serv.*, 619 F.2d 1132, 1139 reversed on other grounds. [See also *Kennedy Hts. Apts. LTD v. McMillan*, 78 F.Supp. 2d 562, 567-568; 456 US 813, 102 S.Ct 88]. In *Dugan v. Rank*, 372 U.S. 609, 621-622; 83 S.Ct 999, 1006-1007 (1963) "Supreme Court has recognized two exceptions to the doctrine that sovereign immunity absent specific statutory consent to suit bars suit against the sovereign" (1) where the federal officers in question act beyond statutory powers or (2) where the statutory powers exercised or the manner in which they are

exercised by the federal officers are unconstitutional. In the instant case, the manner in which the various federal agencies and officers ignored acting can only be characterized as unconstitutional.

> In *Giddings v. Chandler*, 979 F.2d 1104, 1108-1109,
>
> To have standing, plaintiff must satisfy requirements of injury, causation and redressability (*Jarecki v. United States*, 590 F.2d 670, 675 [7th Circuit]; *CBS Inc. v. Young*, 522 F.2d 234, 237-238 [6th Circuit]; *City of New York v. Heckle,r* 578 F.Supp. 1109, affd 742 F.2d 729). He must also establish that a duty is owed to him.

This exception to the bar of sovereign immunity can clearly be established from the facts of the instant case:

> (1) injury in fact: *Ganesan went bankrupt and lost most of a $12 Million dollar estate, patents, royalties, etc.,*
>
> (2) causation: *it is uncontested that Vallabhaneni's contemporaneous claim of being single and married, not her being found common law married, that caused Ganesan's financial damage*, and
>
> (3) redressibility: *court could rule financial damages against Vallabhaneni and all those who abetted her in this endeavor (Betulli v. Indep, 242 F.3d 290).*

In *Gomez Chavez v. Perryman*, 308 F.3d 796, 800 the above discretion is confined to limitations on commencing proceedings, adjudication, or removal orders. In the seminal cite, *Reno v. American Arab Committee*, 119 S.Ct 936, 943, Supreme Court opined that such discretion is offered narrowly to prevent prolongation of removal proceedings. Further, Court clearly opined that it is restricting such discretion to **only** those three issues.

Hiding under the cloak of sovereign immunity and watching a citizen get totally ruined is not what the Supreme Court intended. The Supreme Court has opined in *US v. Nordic Village,* 503 US 30, 34, "On occasion, narrowly construed exception to waivers of sovereign immunity where it was consistent with Congress's clear intent," and in *Edelman v. Jordan,* 415 US 651, 663, **"Again, the absence of consent is not the germane issue. The relevant question is did Congress imply a private cause of action?"** [emphasis mine] Of course, Congress's intent would be the protection of the citizenry.

Queenan v. Heckler, 581 F.Supp. 1216, 1218-1219 clarifies "Mandamus as an important means to correct abuses of discretion by administrative agency where other relief would be inadequate to protect rights of those injured by agency's action." Obviously, action also implies inaction, and all federal agencies Ganesan contacted fall in this category. In *Lynns v. Weinberger,* 376 F.Supp. 248, "Writ of Mandamus may issue, regard to jurisdictional amount when a Federal official fails to comply with a specific statutory or regulatory direction or with a constitutional mandate." Further, in *Marinoff v. Department of Health,* 456 F.Supp. 1120, "Official conduct may have gone so far beyond any rational exercise of discretion as to call for Mandamus, even when action is within letter of authority granted." The actions of Federal agencies in this case are well characterized by the above.

Now we look at just a few cases where the BICE took action against sham marriages. In *US v. Posadarios,* 158 F.3d 832, 862, Mr. Rios was convicted for lying on immigration forms. In *U.S. v. Corrillo-Colmener,o* 523 F.2d 1279, Colmenero was prosecuted for knowingly making a false statement.

Witter v. I.N.S., 113 F.3d 549, 552-553 is a 5th Circuit case illuminating the issues of the instant case. "In this case, a Texas State Court order vacating annulment retroactively validated parties' marriage from its inception under Texas law." On page 552, the Court found that, while the common law marriage may be valid for all concerns of the state ... it cannot and does not make a lie uttered to a visa officer in 1989 a truthful statement when it was made." The case establishes clearly the basis for Ganesan's claim of fraud.

"Changes in marital status undertaken after entry into United States should not be used to manipulate immigration law" (*Witter v. I.N.S.*, 113 F.3d 549, 552-553; *Garcia v. I.N.S.*, 31 F.3d 441, 443; *Hendrix v. I.N.S.*, 583 F.2d 1102, 1104). There is no evidence that Vallabhaneni informed BICE officials she was relying on a common law marriage. As per page 554 of *Witter v. I.N.S.*, the BICE clearly found Vallabhaneni and Ganesan were not married, and arguments to the contrary were misrepresentations.

"A marriage is a sham when an alien claims a marriage to obtain an advantage" (*Lutwak v. US*, 344, US 604, 611-612; *Bark v. I.N.S.*, 511 F.2d 1201, 1201-1202). "Proof of intent to deceive is not required; rather knowledge of the falsity of representation is sufficient" (*Forbes v. I.N.S.*, 48 F.3d 439, 442). If Vallabhaneni's argument is accepted, "It will rest with the married alien to decide unilaterally whether his or her marriage was valid or invalid according to the goal he or she wishes to achieve" (*Hendrix v. I.N.S.*, 583 F.2d 1102, 1104).

Clearly, BICE has been willing to take action when claims in state court and statements made on visa forms are in conflict. Ganesan's charges deserve the same treatment.

In responding to Ganesan, the U.S. Attorney conceded that a dozen or more Federal criminal statutes (detailed in Appendix H) were violated by Vallabhaneni but he argued:

(a). the U.S. Attorneys have discretion in prosecution and

(b). there is a sovereign immunity cloak under which they can hide when questioned of the abuse of discretion.

U.S. Attorney asserted prosecutorial discretion in the face of the extraordinary damage done to Ganesan of direct loss of two millions dollars and indirect loss of up to a billion dollars in potential future business. But "selective prosecution... can violate the equal protection clause of the 14th Amendment" (*Oyler v. Boles*, 368 U.S. 448, 82 S.Ct. 501).

In *U.S. v. Kahl*, 583 F.2d 1351, 1353, the Internal Revenue Service claimed lack of adequate personnel to prosecute all violators of our tax laws. However, the I.R.S. stated that it actively pursued all violations of the filing statutes that come to its attention, and it has used this as a defense against claims of selective prosecution. But, it is not the position of the I.R.S. in particular, and all Federal agencies involved in general, that Ganesan and his attorneys did not make them aware of Vallabhaneni's violations and the damages it was causing Ganesan.

Further,

> The Supreme Court has concluded that the thrust of § 1252g is directed towards eliminating the prolongation of removal proceedings through judicial intervention in the exercise of the Attorney General's discretion (*Alvidres-Reyes v. Reno,* 180 F.3d 199, 205).

(see also, *U.S. v. Armstrong*, 116 S.Ct. 1480, 1484-1487).

Judicial deference to the decision of these executive branch officers should be balanced against the harm to Ganesan. Ganesan cannot help but wonder if he received second class treatment because he is a naturalized citizen and / or due to his Asian ethnic heritage.

The Supreme Court explained long ago, "Equal protection of law requires not only that laws be equal on their face but also that they be executed so as not to deny equality" (*Yick Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064 (1886)).

We also cite:

> [It has been almost 30 years since Congress granted] an unqualified waiver of sovereign immunity in actions seeking non-monetary relief against legal wrongs for which governmental agencies are accountable....
>
> Section 702 acquired its current form in 1977 when Congress amended it to add the second sentence. The clear objective of the 1976 amendment was to waive sovereign immunity as a defense in actions seeking relief other than monetary damages (cites omitted).
>
> Congress was quite explicit about its goal of eliminating sovereign immunity as an obstacle in seeking judicial review of the Federal official's conduct, reasoning that courts can make a useful contribution to the administration of government by reviewing the legality of administrative conduct which adversely affects private persons (cites omitted)... and that the amendment to strengthen this accountability by withdrawing the defense of sovereign immunity in actions seeking relief other than monetary damages, such as injunctions, declaratory judgment, or writ of mandamus.

> ... [A]ccordingly, § 702 was designed to eliminate the defense of sovereign immunity as to any action in a Federal court seeking relief other than money damages and stating a claim based on the assertion of unlawful official action (inaction) by an agency or any officer or employee of the agency.
>
> .... The waiver was clearly intended to cover the full spectrum of agency conduct." *Presbyterian Church (U.S.A.) v. U.S.*, 870 F.2d 518, 524-525

Ganesan, in the instant case, suffered a legally protected injury at the hands of Vallabhaneni and did invoke the I.N.S. (now B.I.C.E.) and I.R.S. administrative processes in order to seek redress of wrongs committed against him (*California Motor Transport Company v. Trucking Unlimited*, 404 U.S. 508. 92 S.Ct. 609). But in the instant case, the federal agencies failed to take action.

U.S. v. Testan, 424 U.S. 392, 399 and *Bruno v. U.S.*, 547 F.2d 71, 73 cited by U.S. Attorney involve the direct payout of money from the state treasury and are not applicable in the instant case which involves only ancillary effect:

> State officials, in order to shape their official conduct to the mandate of court orders, would more likely have to spend money than if they had been left free to pursue their previous course of conduct. Such an ancillary effect on the state treasury is permissible and often an inevitable consequence. *Edelman v. Jordan, 415 U.S. 651, 653*

Also, there is the exception to the doctrine of sovereign immunity absent specific statutory consent (*Dugan v. Rank*, 372 U.S. 609, 621-622, 83 S.Ct. 999, 1006-1007). In addition, *U.S. v. Nordic Village*, Inc., 112 S.Ct. 1011

contemplates "exception to waiver of sovereign immunity where it was consistent with Congress's clear intent."

U.S. Attorney did not discuss any of the issues related to waiver of sovereign immunity. Clearly, he knew such discussion would be futile so he chose to avoid the subject.

For the above reasons, any argument on sovereign immunity in this case is frivolous. Prosecutorial discretion exercised in this case fails the abuse of discretion test and the Constitutional right to equal protection.

C. The United States District Court was incorrect in denying a Writ of Mandamus using the principle of res judicata or preclusion.

An alien who resides in the United States is a ward and charge of the Federal government. The Federal government is responsible for the conduct and actions of its ward.

Ganesan initially filed the Writ of Mandamus petition in Case No. USDC A:02-CA-614-JN (Ganesan v. Sudha Vallabhaneni; Bureau of Immigration and Customs Enforcement). However, U.S. District Court, as is its right under Federal Rules of Civil Procedures, Rules 20 and 42, chose to treat this mandamus petition as a new case and gave it a new number, Case No. USDC A:03-CA-00030-JN.

The original case A:02-CA-614-JN was dismissed for "lack of subject matter jurisdiction" under the Rooker-Feldman doctrine, (Ganesan appeal that ruling to 5th Circuit Court, Case No. 03-50193, and filed a Writ of Certiorari on March 24, 2004 after dismissal by the 5th Circuit) and then US Attorney successfully used that dismissal as being preclusive/res judicata on the mandamus petition. It was the

District Court, at its discretion, that split this into two cases, thus giving the false appearance of multiple efforts by Ganesan to litigate with the United States and its agencies.

Federal Rules of Civil Procedure, Rule 1, states "They [Federal Rules of Civil Procedure] shall be constructed to secure the just, speedy and inexpensive determination of every action." The District Court's action resulted in delay and increased court fees. "Policy of these rules favors resolving all disputes between parties in a single litigation" (*Gutor Intern AG v. Raymond Packer Co.*, IL 493 F.2d 938). Clearly, the District Court chose not to do so. "It is contrary to the spirit of these rules for decision on merits to be avoided on basis of mere technicalities" (*Forman v. Davis*, 83 S.Ct. 227). The District Court used an unlawful basis to dismiss the Writ of Mandamus rather than having to order federal agencies to simply act. In *Koff v. Butterworth*, 765 F.Supp. 716, 716-717,

> On Motion to Dismiss, District Court must read plaintiff's Pro Se allegations liberally, holding them to less stringent standards than those drafted by attorneys in complaint. And after consideration under this more lenient standard, complaint should not be dismissed unless it appears beyond a doubt that plaintiff can prove no set of facts in support of claim which would entitle him to relief.

In *Ruffin v. ITT Continental Baking Co.*, 636 F.Supp. 857, 858-859:

> [If] summary dismissal is not rendered after as assessment of the relative merits of a claim, but rather is predicated upon, for example, a procedural omission (or a jurisdictional question), then res judicata is not applicable and will not prevent reconsideration.

Clearly there is no res judicata/preclusive bar since the prior case was dismissed on basis of subject matter jurisdiction. [See also, *Liberty Mutual Co. v. Vanderbush Sheet Metal* Co., 512 F.Supp. 1159, 1163.] The District Court clearly had jurisdiction on the mandamus action under 28 USC § 1361.

But, arguendo, if we accept lack of jurisdiction argument on the earlier case (Writ of Certiorari 03-1383),

> In a determination of the special issue of whether a jurisdictional dismissal constitutes a 'judgment on the merits,' it is well established that a dismissal for lack of jurisdiction is not a judgment on the merits and does not bar a subsequent suit on the same claim unless, as a precondition to determine its decision, the court must decide the legal issue. (*Brooks v. Arlington Hosp. Ass'n,* 850 F.2d 191, 196; *Parklane Hosiery Co., Inc.v. Shore,* 439 US 322, 326).
>
> When the federal court determined it does not have subject matter jurisdiction ... any finding beyond those necessary to make that determination are 'not actually litigated' or 'necessary to the outcome' and therefore do not have collateral estoppel or res judicata consequences (*Jack Faucett Assoc., Inc. v. American Tel. & Tel. Co.*, 744 F.2d 118, 125).

"It is well established law the dismissal for lack of jurisdiction does not bar a subsequent suit on the same claim brought in a court of competent jurisdiction" (*McLaughlin v. Alban,* 775 F.2d 389, 391; *Bunker Ramo v. United Business Forms Inc.*, 713 F.2d 1272, 1277 ; *Segal v American Tel. and Telegraph Co., Inc.*, 606 F.2d 842, 844).

"A final judgment, however, will have full res judicata effect only if it is on the merits" (*Harper Plastics Inc. v.*

Amoco Chemicals Corp., 657 F.2d 939, 943; *FTC v. Food Town Stores, Inc.*, 547 F.2d 247, 249; *Thomas v. Consolidation Coal Co.*, 380 F.2d 69, 79). "A dismissal for lack of subject matter jurisdiction is not on the merits and consequently will not bar a later suit" (*Costello v. US*, 81 S.Ct 534, 544-546; *Boone v. Kurtz*, 617 F.2d 435, 436 [5th Circuit]). "Although judgment of dismissal for lack of subject matter jurisdiction is valid and final, judgment does not bar another action by plaintiff on same claim" (*Segal v. American Tel. and Telegraph. Co., Inc.*, 606 F.2d 842, 844 and also see *Hughes v. US*, 71 US 232; *Acree v. Airline Pilots*, 390 F.2d 199 [5th Circuit]; *Weston Funding v. Lafayette Towers*, 410 F.Supp. 980, 984). "Issue preclusion, unlike bar, forecloses litigation only on those issues of fact or law that were actually litigated and necessarily decided by a valid and final judgment between the parties, whether on the same or different claim" (*Lawlor v. Natl. Screen Service*, 75 S.Ct 865; *Russel v. Place*, 94 US 606). "Relitigation of an issue presented and decided in a prior case is not foreclosed, if the decision on the issue was not necessary to the judgment reached in the prior litigation" (*Cromwell v. County of Sac*, 94 US 351). None of Ganesan's Mandamus claims were reached in the prior litigation. In *Harper Plastics v. Amoco Chemicals Corp.*, 657 F.2d 939, 943 "For purposes of res judicata, definition of a 'judgment on the merits' is one which is based on the legal rights as distinguished from mere matters of practice, procedure, jurisdiction, or form."

Although Ganesan's prior case against Vallabhaneni and BICE was dismissed, the Mandamus issues have never been litigated. In *Boone v. Kurtz*, 617 F.2d 435, 436 [5th Circuit]: "... was properly dismissed under res judicata where a previous, 'almost identical' complaint had been dismissed by court for lack of jurisdiction and where the dismissal order

has not been appealed." In *Dababnab v. West Virginia Board of Medicine,* 47 F.Supp. 2d 734, 747:

> Plaintiff's dilemma is clear; raise claims in an allegedly corrupt state court system, loose, and then be barred by res judicata in federal court or raise claims in federal court and be barred by Rooker-Feldman.... If state's judicial system does not apply or uphold minimal constitutional due process procedures to ensure fairness and the whole state judicial process appears to have become corrupted by the highly partisan election, and low standards of the judges and justices have engaged in, then the principle of comity which undergrids the Rooker-Feldman doctrine is absent, and the doctrine is inapplicable, thus permitting review of state court decision.

Nothing in the state court judgment on common law marriage/divorce or the Federal proceedings of fraud prevents Ganesan from requesting federal agencies take affirmative action through Mandamus, particularly given that such requests were made to those federal agencies long before any state court finding of common law marriage, and especially since Ganesan had been told by federal authorities to exhaust all his state and other federal judicial remedies.

Ganesan's claims arise from violation of federal laws by Vallabhaneni, and failure of Federal agencies to enforce the Congressionally mandated federal laws of our land. As a consequence, a Federal court has ample jurisdiction under 28 U.S.C. § 1361. It is black letter law that Congressional intent rather than consent is the issue (Pages 21, 27 of Appellate Brief).

> "... when enforcement agency exercises discretionary power arbitrarily and unjustly, that enforcement of valid regulation becomes violative of the equal protection clause" (*Thompson v. Spear*, 91 F.2d 430).

Vallabhaneni brought in state court an action of Common Law Marriage / Divorce (alleging they lived together, slept together, and held out as husband and wife). Ganesan holds:

(a) Unilateral declarations of "single" by Vallabhaneni, repeatedly, in sworn Federal immigration and passport documents, were substantial evidence that overrode any evidence toward her claims of being married.

(b) Deference showed to *state* law *fraud* in adjudicating common law marriage claims (*Persons v. Persons*, 666 S.W.2d 560, 561, 563: credit application, if false, would have exposed man and woman to criminal penalties per V.T.C.A. Family Code § 1.91 and V.T.C.A. Penal Code § 32.32(b)) should apply as well to *federal* law fraud, and Vallabhaneni violated 12 or more Federal criminal statutes.

Ganesan contends an action of fraud by Vallabhaneni by her contemporaneous claims of being single and married led to his financial ruin and bankruptcy. It was her claims in pre-litigation proceedings that led to stoppage of his business payments, causing his bankruptcy, and not the ultimate entry of a "married" verdict in state court a year later.

In the mandamus action, which U.S. District Court separated as an independent action from the fraud case, Ganesan requested the Court issue a writ for "affirmative action by responsible Federal agencies," since Ganesan, as per the advice of the Federal agencies, had first exhausted all

other judicial remedies. The mandamus issue of "affirmative action" by responsible Federal agencies has not been litigated in any court on its merits.

The "claim preclusion" aspect of "res judicata," if upheld in this case, would set precedent precluding injured parties from seeking Federal remedies for fraud or asking the Federal agencies to take affirmative action on complaints made long before the state court verdicts. In essence, Ganesan was first told by Federal agencies he must exhaust other remedies, and then the U.S. Attorney claimed that by doing so he is now blocked from this remedy.

In "issue preclusion," the U.S. Attorney claims the state court finding of a common law marriage prevents Ganesan from litigating on the Federal actions of fraud and mandamus. The argument must fail, given that:

(a) the criminal fraud issue is independent of the common law marriage question (*Persons v. Persons*, 666 S.W.2d 560), and

(b) the complaints to the Federal agencies which led to the mandamus action, pre date the state court verdict by a wide margin.

In summary, U.S. Attorney is trying to use the cloak of "res judicata" to avoid his sworn duty under the Constitution to protect citizens from harm from aliens. The District Court erred in its dismissal of the Mandamus petition. Neither preclusion nor res judicata are applicable.

CONCLUSION

This mandamus action is about the unwillingness of the Federal agencies to uphold the Constitution (a sworn duty) to protect the constitutionally guaranteed rights of a citizen and

enforce the congressionally mandated law of our nation. There is no question regarding the **gross violations of numerous Federal statutes by Vallabhaneni, which this Supreme Court affirmed** when it denied Ganesan's Writ of Certiorari in Case 03-1382, nor of the consequential harm and ruin brought upon Ganesan. It is a sad day when our government machinery views it as its discretionary right to allow harm to a citizen. To be tardy and late is almost forgivable; to take no action is not forgivable.

The United States, garnering much strength from the lawful energies of its immigrants, must be vigilant to alien abusers trying to "get rich quick" via unlawful manipulation of her generosity and fairness. Had the U.S. Attorney and the relevant Federal agencies spent just a small portion of the energy enforcing laws on the books that they spent defending their inaction, the tragedy of the last 6-7 years would have been avoided. "If the end result is unlawful, it matters not that the means used in violation may be lawful" (opinion of the Supreme Court per Justice Douglas, announced by Chief Justice Berger in *California Motor Transport Company v. Trucking Unlimited*, 92 S.Ct. 609, 614).

This Court can confirm, by its ruling, our renewed national resolve against economic terrorism by aliens residing under our roof. Accordingly, the Writ of Certiorari for this case should issue.

In the interests of judicial efficiency (Appendix G) and in accordance with Supreme Court Rules, Rule 27.3, the Court may want to consider together this case and Ganesan's Writ of Certiorari stemming from 5th Cir. Case #03-51120 mailed on May 26, 2004.

June 3, 2004 Apparajan Ganesan, Pro Se

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 03-50519
Summary Calandar
D.C. Docket N. A-03-CV-30-JN

APPARAJAN GANESAN
Plaintiff - Appellant

v.

UNITED STATES ATTORNEY; UNITED STATES STATE DEPARTMENT; INTERNAL REVENUE SERVICE; BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT
Defendants – Appellees

Appeal from the United States District Court for the Western Dist of Texas, Austin

Before KING, Chief Judge, and EMILIO M. GARZA and BENAVIDES, Circuit Judges.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.

IT IS FURTHER ORDERED that plaintiff-appellant pay to defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

ISSUED AS MANDATE: MAR 26 2004

A true copy
Text
Clerk, U.S. Court of Appeals, Fifth Circuit
By Mrs Sheika Cliosell
Deputy
New Orleans, Louisiana MAR 26 2004

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
MAR 18, 2004
CHARLES R. FULBRUGE III
CLERK

No. 03-50519

APPARAJAN GANESAN

Plaintiff-Appellant

v.

UNITED STATES ATTORNEY, UNITED STATES STATE DEPARTMENT, INTERNAL REVENUE SERVICE, BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas

ON PETITION FOR REHEARING

Before KING, Chief Judge, and EMILIO M. GARZA and BENAVIDES, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

ENTERED FOR THE COURT:

Signed:// Carolyn Dineen King
UNITED STATES CIRCUIT JUDGE

REHG-2

CLERK'S NOTE:
SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of
Appeals Fifth Circuit
FILED
January 12, 2004
Charles R. Fulbruge III
Clerk

No. 03-50519
Summary Calendar

APPARAJAN GANESAN

Plaintiff-Appellant

v.

UNITED STATES ATTORNEY, UNITED STATES STATE DEPARTMENT, INTERNAL REVENUE SERVICE, BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. A-03-CV-30-JN

Before KING, Chief Judge, and EMILIO M. GARZA and BENAVIDES, Circuit Judges.

PER CURIAM:*

---

*Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.R. 47.5.4.

Apparajan Ganesan, Texas inmate # 904088, challenges the district court's dismissal of his 28 U.S.C. § 1361 mandamus petition requesting an order compelling various federal agencies to initiate criminal and deportation proceedings against his ex-wife. The district court's refusal to issue the writ is reviewed for an abuse of discretion. See United States v. Denson, 603 F.2d 1143, 1146 (5th Cir. 1979) (en banc).

"[M]andamus is not available to review the discretionary acts of officials." Giddings v. Chandler, 979 F.2d 1104, 1108 (5th Cir. 1992). A U.S. Attorney exercises absolute discretion regarding whether to initiate a criminal prosecution. United States v. Cowan, 524 F.2d 504, 507-08 (5th Cir. 1975); United States v. Cox, 342 F.2d 167, 171 (5th Cir. 1965) (en banc). The court may not interfere with the free exercise of that discretionary power. Cox, 342 F.2d at 171. Similarly, the Attorney General has the discretion to decline to commence proceedings, which discretion is not subject to judicial interference. See Alvidres-Reyes v. Reno, 180 F.3d 199, 205 (5th Cir. 1999). Moreover, even assuming federal officials owed a duty to prosecute or to initiate criminal proceedings, that duty was not owed to Ganesan, and he lacks standing to challenge the officials' alleged failure to act. See Giddings, 2d at 1110. Dismissal of the petition was proper, and the district court's judgment is AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S. COURT OF
APPEALS
FILED
JAN 08, 2004
Charles R. Fulbruge III
Clerk

No. 03-50519

APPARAJAN GANESAN

Plaintiff-Appellant

v.

UNITED STATES ATTORNEY, UNITED STATES STATE DEPARTMENT, INTERNAL REVENUE SERVICE, BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. A-03-CV-30-JN

ON PETITION FOR REHEARING

Before KING, Chief Judge, and EMILIO M. GARZA and BENAVIDES, Circuit Judges.

IT IS ORDERED that the petition for rehearing is DENIED.

ENTERED FOR THE COURT:

Signed:// Carolyn Dineen King
UNITED STATES CIRCUIT JUDGE

CLERK'S NOTE:
SEE FRAP AND LOCAL
RULES 41 FOR STAY OF THE
MANDATE

Note regarding the following 5th Court Orders. These were issued for Case No. 03-50193 and not the instant case. They are included here since the instant case stemmed from the earlier case and was separated from it by the U.S. District Court.

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 CAMP STREET
NEW ORLEANS, LA
70130

July 21, 2003

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 03-50193 Ganesan v. Vallabhaneni
USDC No. A-02-CV-614-JN

The court has taken the following action in this case: appellant's motion to stay further proceedings in this Court has been DENIED.

Sincerely,
CHARLES R. FULBRUGE III, Clerk

By: signed:// Lisa Conrad
Lisa Conrad, Deputy Clerk
504-310-7697

Mr Apparajan Ganesan
Mr Charles Alfin Herring Jr
Mr John Francis Paniszczyn

MOT-2

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of
Appeals Fifth Circuit
FILED
October 22, 2003
Charles R. Fulbruge III
Clerk

No. 03-50193
Conference Calendar

APPARAJAN GANESAN

Plaintiff-Appellant

versus

SUDHA VALLABHANENI;
BUREAU OF IMMIGRATION AND
CUSTOMS ENFORCEMENT,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. A-02-CV-614-JN

Before KING, Chief Judge, and JOLLY and STEWART, Circuit Judges. PER CURIAM:*

Apparajan Ganesan, Texas inmate #904088, proceeding pro se, appeals the district court's dismissal of his civil complaint.

*Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.R. 47.5.4.

Ganesan's motion for hearing en banc is DENIED.

"The Rooker-Feldman** doctrine holds that federal district courts lack jurisdiction to entertain collateral attacks on state judgments." United States v. Shepherd, 23 F.3d 923, 924 (5th Cir. 1994). If the district court must examine issues that are "'inextricably intertwined' with a state judgment, the [district] court is in essence being called upon to review the state-court decision, and the originality of the district court's jurisdiction precludes such a review."' Id. Under the Rooker-Feldman doctrine, Ganesan may not attempt to invalidate in federal court the state court judgment obtained in the common law marriage proceeding. See id.

Ganesan's appeal is without arguable merit and is frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5TH Cir. R. 42.2. The dismissal of Ganesan's appeal counts as a strike for purposes of 28 U.S.C. § 1915(g). Ganesan is warned that should he accumulate three strikes, for purposes of 28 U.S.C. 1915(g), he will be unable to proceed in forma pauperis in any civil action or appeal unless he is under imminent danger of serious physical injury.

APPEAL DISMISSED AS FRIVOLOUS; MOTION FOR EN BANC HEARING DENIED; SANCTIONS WARNING ISSUED.

** Dist. of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476, 482 (1983); Rooker v. Fid. Trust Co., 263 U.S. 413, 415 (1923).

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S. COURT OF
APPEALS
FILED
JAN 08, 2004
Charles R. Fulbruge III
Clerk

No. 03-50193

APPARAJAN GANESAN

Plaintiff-Appellant

versus

SUDHA VALLABHANENI;
BUREAU OF IMMIGRATION AND
CUSTOMS ENFORCEMENT,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. A-02-CV-614-JN

ON PETITION FOR REHEARING

Before KING, Chief Judge, and JOLLY and STEWART, Circuit Judges.

IT IS ORDERED that the petition for rehearing is DENIED.

ENTERED FOR THE COURT:

Signed:// Carolyn Dineen King
UNITED STATES CIRCUIT JUDGE

CLERK'S NOTE:
SEE FRAP AND LOCAL
RULES 41 FOR STAY OF THE
MANDATE

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 CAMP STREET
NEW ORLEANS,
LA 70130

January 12, 2004

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 03-50193 Ganesan v. Vallabhaneni
USDC No. A-02-CV-614-JN

The court has taken the following action in this case: appellant's motion to stay the mandate has been DENIED.

Sincerely,
CHARLES R. FULBRUGE III, Clerk
By: signed//: unreadable
Lisa Conrad, Deputy Clerk
504-310-7697

Mr Apparajan Ganesan
Mr Charles F Herring Jr
Mr John Francis Paniszczyn

MOT-2

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FILED
JAN 16 2004
Clerk, U.S. District Court
Western District of Texas
BY_____
DEPUTY CLERK

U. S. Court of Appeals
FILED
OCT 22 2003
Charles R. Fulbruge III
Clerk

No. 03-50193
Conference Calendar

D.C. Docket No. A-02-CV-614-JN

APPARAJAN GANESAN
Plaintiff-Appellant

v.

SUDHA VALLABHANENI; BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT,
Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas, Austin.

Before KING, Chief Judge, and JOLLY and STEWART, Circuit Judges.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the appeal is dismissed as frivolous.

IT IS FURTHER ORDERED the plaintiff-appellant pay to defendants-appellees the costs on appeal to be taxed by the Clerk of the Court.

ISSUED AS MANDATE: JAN 14 2004

Clerk, U.S. Court of Appeals,
Fifth Circuit
By _____
Deputy
New Orleans
JAN 14 2004

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1B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
AUSTIN DIVISION
2003 AP 24 PM 4:14
Western District of Texas
U.S. CLERK'S OFFICE
BY: initials
DEPUTY

APPARAJAN GANESAN	§	
	§	
VS.	§	CIVIL NO.
	§	A-03-CA-0030 JN
UNITED STATES ATTORNEY,	§	
UNITED STATES STATE	§	
DEPARTMENT, INTERNAL	§	
REVENUE SERVICE, AND	§	
IMMIGRATION AND	§	
NATURALIZATION SERVICE	§	

ORDER

On this date, the Court having duly considered the federal defendants' Motion to Dismiss or in the Alternative, Motion for Summary Judgment and finding the same to be meritorious, it is hereby granted.

Specifically, the Court finds that the Plaintiff, through this cause of action, is attempting to re-litigate issues arising from the same underlying facts and issues involved in previous causes of action decided against him. Accordingly, this case is barred by the doctrine of res judicata and/or federal issue preclusion. *See, Kaspar Wire Works, Inc. v. Leco Engineering and Machine, Inc.*, 575 F.2d 530 (5th Cir.1978); *Travelers Ins. Co. v. St. Jude*

Hospital of *Kenner, Louisiana*, 37 F.3d 193, 195 (5th Cir.1994). Additionally, Ganesan has not established any causes of action upon which relief can be granted.

Due to Plaintiff's demonstrated attempts to re-litigate issues, he is prohibited from bringing any future cause of action in any forum against the United States, its agencies, employees, or entities without prior permission of the Court.

Accordingly, judgment is entered against the Plaintiff and on behalf of the federal defendants, and Plaintiff's cause of action is dismissed in its entirety with prejudice. All taxable costs are assessed against the Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants' Motion to Dismiss or in the Alternative, Motion for Summary Judgment is hereby GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this case is DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this case is CLOSED and any pending motions are hereby DENIED AS MOOT.

SIGNED AND ENTERED this 24th day of April, 2003.

Signed:\\ James R. Nowlin
JAMES R. NOWLIN
CHIEF UNITED STATES
DISTRICT JUDGE

3B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
AUSTIN DIVISION
2003 AP 24 PM 4:14
Western District of Texas
U.S. CLERK'S OFFICE
BY: initials
DEPUTY

APPARAJAN GANESAN	§	
	§	
VS.	§	CIVIL NO.
	§	A-03-CA-0030 JN
UNITED STATES ATTORNEY,	§	
UNITED STATES STATE	§	
DEPARTMENT, INTERNAL	§	
REVENUE SERVICE, AND	§	
IMMIGRATION AND	§	
NATURALIZATION SERVICE	§	

FINAL JUDGMENT

Before the Court is the above-entitled cause of action. Based on the Court's previous Order entered on this date, the Court enters the following Final Judgment pursuant to Federal Rule of Civil Procedure 58.

IT IS ORDERED, ADJUDGED AND DECREED that this case is CLOSED and all pending motions are DENIED AS MOOT.

SIGNED AND ENTERED this 24th day of April, 2003.

Signed:\\ James R. Nowlin
JAMES R. NOWLIN
CHIEF UNITED STATES
DISTRICT JUDGE

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711 (512) 463-1312

August 29, 2002

Mr. Nicolai Von Kreisler
Von Kreisler & Swanson
610 West Lynn
Austin, TX 78703

Mr. William D Powers
Piper & Powers, LLP
2206 Lake Austin Blvd.
Austin, TX 78703

RE: Case Number 02-0520
Court of Appeals Number: 03-01-00288-CV
Trial Court Number: 96-14089

Style: APPARAJAN GANESAN
v.
SUDHA VALLABHANENI

Dear Counsel:

Today, the Supreme Court of Texas denied the petition for review in the above-referenced case. (Justice O'Neill not sitting.)

Sincerely,
Andrew Weber, Clerk

By signed// Jessica L. Vlassac
Jessica L. Vlasac, Deputy

cc: Ms. Diane O'Neal, Clerk
Ms. Amalia Rodriguez-Mendoza

SUPREME COURT OF THE STATE OF TEXAS

Case Number: 02-0520

Date Filed: 6/14/2002

Case Type: PET FOR FREV/MET

Style: APPARAJAN GANESAN

V: SUDHA VALLABHANENI

Case Number: 02-0520 -> Event: 1265

Date: 8/29/2002

Event Type: Petition for Review under Rule 53 Disposed of

Disposition: Pet/app denied with Justice not sitting

(This information was obtained from Texas Judiciary Online, www.supreme.courts.state.ts.us/opinions)

FILED
IN SUPREME COURT
OF TEXAS
JUL 22 2002
ANDREW WEBER, Clerk
By:_____ Deputy

02-0520

CAUSE NO. 02-520
IN THE SUPREME COURT OF TEXAS
APPARAJAN GANESAN, *Petitioner*
VS.
SUDHA VALLABHANENI, *Respondent*

PETITION FOR REVIEW

TO THE HONORABLE SUPREME COURT OF TEXAS:

Petitioner APPARAJAN GANESAN submits this *Petition For Review* and requests the Court to consider the following issues.

1. *As a matter of law, Respondent was never married to Petitioner at common law under circumstances where, as a foreign national and resident alien, she declared unequivocally during the alleged marriage that she was an "unmarried single" to the Immigration Service, the Internal Revenue Service and the passport branch of the Indian Consulate.*

Respondent filed for divorce around September 1996 claiming a common law marriage to Petitioner as of September 24, 1994. The jury found that the common law marriage existed as of February 23, 1995.

However, in May 1995, Respondent filed several documents with the immigration service stating that she was unmarried and single (see testimony of INS Agent). Respondent's divorce case, like her claim to have been married before that time, makes her a violator of 18 USCA § 1546, 18 USCA § 1015, 8 USCA § 1227(a)(3)(B)iii and 8 USCA § 1227(a)(3)(C)i.

Petitioner notes that the five-prong test established in *US vs. Maria Del Carmen Cortilla Montemyor,* 712 F.2d 104, of statement, falsity, materiality, specific intent and agency jurisdiction, can easily be established in the present case. Similar falsities have been prosecuted. *See, e.g., USA v. Yum,* 776 F.2d 490 and USA v. *Wiggan,* 673 F.2d 145.

In a related 2001 bankruptcy examination, the Internal Revenue Service has identified the marital status of Respondent as "single" but has refused to launch criminal inquiry (which would result in deportation) for lack of adequate recoverable assets. The State Department declared its unwillingness to compel the Indian Consulate to release Respondent's passport information citing the sensitive nature of the State Department's negotiations with India. Earlier the Consulate refused to obey a Travis County District Court order citing "sovereignty," with the result that Petitioner was unable to present this evidence at trial, notwithstanding his request for a postponement.

Respondent and her attorneys contend that her statement of being unmarried on immigration, passport, visa, and tax documents goes merely toward the cumulation of evidence on the issue of common law marriage or not. *Matter of the Estate of Giesel,* 734 SW2d

27, 31 (Tex. Civ. App.-Houston [1st Dist.] 1987, writ refused, n.r.e.). Petitioner argues that statements by an alien resident in immigration and passport documents are irrevocable and binding and, as a matter of law, cannot be negated merely because other evidence may preponderate otherwise.

2. ***Petitioner's bankruptcy proceeding automatically stayed the limitations period for his request for the court reporter's notes and records such that it was error for his case not to be remanded to the trial court for a new trial.***

Petitioner complained on appeal that he should be granted a new trial because the record was incomplete. The court reporter had destroyed her notes and records before he had a chance to request or obtain them for purposes of his appeal.

Petitioner should have been granted a new trial for the following reasons. Actions taken by Respondent in the divorce proceedings prevented Petitioner from meeting his financial obligations to Mead Corporation, a creditor, and required him to file a Chapter 7 bankruptcy in December 1997, Case No. 98-10295-FM-7, In the US Bankruptcy Court, Western District, Austin Division. Petitioner's total obligation to Mead by that time exceeded $7,513,000.00. The legislative history of 11 USC § 541 states, "it includes all kinds of property including tangible or intangible property, causes of action ... all other forms of property currently specified in section 10a of the Bankruptcy Act. " *In re: O'Dowd,* 233 F.3d 197, 202 (3rd Cir. 2000). It is also stated in *Integrated Solutions v. Service Support,* 124 F.3d 487, 491 (3rd Cir. 1997):

> while we have not decided the issue, we have previously noted the broad sweep of § 541 and the

> fact that section expressly includes 'causes of action' as property included in the estate .... Given § 541's broad scope, its legislative history, and the weight of authority from other jurisdiction we conclude that state laws prohibiting the assignment or transfer of property, including causes of action and tort claims, do not prevent the inclusion of such property in the bankruptcy estate.

It is an incontrovertible fact that Petitioner listed his claims against Respondent as property of the bankruptcy estate and repeatedly asked the Bankruptcy Trustee to act on them. Under these circumstances, the broad sweep of § 541 overrides any precedent arising from state case law such as *Pitrowski v. Minns,* 873 SW2d. 368 (Tex. 1993). Moreover, in *Official Committee v. R.F. Lafferty & Co.,* 267 F.3d 340, 346 (3rd Cir. 2001), the court said, "under section 541, the bankruptcy estate includes all legal or equitable interests of the Debtor in property as of the commencement of bankruptcy." This case directs courts to evaluate defenses as they existed at the commencement of bankruptcy.

Petitioner believes it is clear from the above that his bankruptcy proceeding stayed the limitation period for his request for the court reporter's notes and records. The advent of the Chapter 7 estate and the appointment of the Chapter 7 Trustee divested Petitioner, as a Chapter 7 debtor, of all right, title and interest in non-exempt property of the estate as of the commencement of the bankruptcy case. *Spenlinhauer v. 0'Donnel, 261* F.3d 113, 118 (1st Cir. 2001). Federal case law overwhelmingly supports the argument that the Bankruptcy Trustee retained the right to Petitioner's interest in the court reporter's notes. Because Petitioner had no interest in the court reporter's notes and records, and because his interest in them was clearly the property of the bankruptcy estate, the

requirements of *Petrowski v. Minns* do not apply, and Petitioner is entitled to a new trial because his appellate record was incomplete.

3. *It was error for the trial court to fail to submit Petitioner's requested instructions to jury.*

The appellate court stated that trial courts are charged with submitting "such instructions and definitions as shall be proper to enable the jury to render a verdict and the trial court's latitude in this area is even greater than in the area of jury questions."

A reflection on the jury's questions delivered to the trial judge during deliberations points to the problem in the appellate court's not finding error in the trial court's failure to submit Petitioner's requested instructions. The jury was clearly confused as to whether it had to find that Petitioner was married in Texas or in India or worldwide. Obviously Petitioner's testimony regarding why he didn't stay with his future mother-in-law when he visited India was behind this confusion. Petitioner's instructions would have clarified the issues in this case and they were absolutely necessary given the conflicting testimony of both parties on the issues.

Petitioner contends that the court's charge caused the rendition of an improper verdict. Given the circumstances, the nature of the parties' agreement--to get married in the future, not to be married at the present--was of the utmost importance and went to the heart of the dispute. It was clear from the questions the jury sent during deliberations that it was having great difficulty in evaluating the evidence and answering the question before it. One cannot declare both to be single and married. Yet, given the testimony of each party, which showed them both as representing themselves

as single and married at various times but never at the same time, it caused reversible harm to have excluded the instruction from *Fuentes v. Transamerican National Gas,* 933 SW2d 624 (Tex. App. San Antonio 1996, *reversed in part on other grounds,* 962 S.W.2d 28 [Tex. 1997]), that one cannot both declare to be single and married or drop in and out of a marriage based on financial opportunities. *Leal v. Moreno,* 733 SW2d 322 (Tex. Civ. App.-Corpus Christi 1987, no writ), and *Thomkins v. State,* 774 SW2d 195 (Tex. Crim. App. 1987), clearly established that a future agreement to marry does not establish marriage. This went to the heart of the case. Russell v. *Russell,* 865 SW2d 929 (Tex. 1990), clarified the lack of weight that casual, off-the-cuff uncontradicted references to "my husband" or "my wife" have toward an alleged agreement to be married. This was a core issue and a highly divisive one at trial. It is impossible for a rational trier of fact to come to a proper judgment in this case without the clarifying aids of Petitioner's requested instructions derived from these prior case rulings.

4. *It was error for the court to have failed to admit into evidence the letter from Respondent's mother suggesting a May/June 1995 wedding date.*

Respondent's mother's letter was an important piece of evidence. Had it been admitted it would have negated the testimony of Respondent's siblings because it showed that Respondent's family did not believe or consider the parties to be married at that time. Respondent contended that, having been brought up as a traditional Indian woman, she would never have moved in with Petitioner without marriage (note that the jury, in its verdict, chose the move-in date as the common law marriage date). Yet the mother of this traditional Indian woman broached the subject of a marriage

at a future date some five months later, which clearly suggests that the parties had an agreement to marry in the future and underscores their current unmarried state. The letter supported clearly Petitioner's position, and had it been admitted the jury would in all probability not have found the "move-in" date as the common law marriage date. The appellate court questioned how the state of mind of Respondent's family was relevant to prove the parties mutual agreement to be married. Since the verdict was to be determined by a preponderance of the evidence, had Respondent's mother's contemporaneous letter been admitted, there would have been virtually no credible evidence to support the existence of a marital contract. The trial court erred in not admitting it because authentication was clearly met under the circumstances. Tex. R.E. 901(4).

5. *The evidence was legally and factually insufficient to support the existence of a common law marriage.*

The first issue presented above clearly questions whether a resident alien, who filed multiple federal documents (some sworn to) as a single person, could turn around and file for a divorce from a common law marriage. Unlike a US citizen, a resident alien owes her Texas residency to declarations she made under federal law, which supersedes any Texas common law marriage statutes. Moreover, even a cursory examination of the trial record suggests that if the testimony of Respondent's siblings had -been balanced against her mother's letter concerning a future wedding date, the evidence left over would not make a case for common law marriage. If anything, the conclusion a rational trier of fact would have to reach is that two people on various occasions made a lot of contradictory statements regarding their marital plans and status. This is not legal or factually sufficient evidence to support the

existence of a common law marriage under the authorities underlying Petitioner's requested jury instructions.

6. Petitioner's property was unlawfully taken away from him as a result of the divorce case.

Petitioner was a successful computer engineer and inventor. He was a wealthy individual, by his standards, before he ever met Respondent. His bankruptcy estate was over $1 million. The evidence showed that he earned his wealth before the time of the alleged marriage. Petitioner urges that the only reason a common law marriage claim was filed against him was to take his wealth, which it has.

It is incontrovertible that an action of fraud was committed by a resident alien against him, which the INS agent who was a witness at the trial confirmed through his testimony and even went so far as to warn of dire consequences if an alien persisted with a false claim that was inconsistent with her sworn documents. Had the INS, IRS and the State Department, whose help Petitioner actively sought, acted in a timely manner, Petitioner's property would have been protected. Lack of due process, in violation of the 5th Amendment and the 14th Amendment of the US Constitution, led Petitioner to a bankruptcy and the total destruction of his wealth in this case.

Petitioner notes that "due process is flexible and calls for such procedural protections as a particular situation demands." T E. Corp. 836 F2d 217. Due process involves basic notions of justice and fair play. *Haug v. Franklin,* 690 SW2d 646; 225 SW3d 85. In assessing fundamental fairness for due process, one must infer from the totality of facts of a particular case in light of reason, precedent, history, private interest at stake, government's interest and risk of erroneous

decisions from procedures employed. 914 SW2d 256. Petitioner submits as an issue to preserve his rights at law that the continued affirmation of a common law marriage gives rise to federal actions for fraud, for extraordinary relief, and for remedies under the immigration laws.

Respectfully submitted,

APPARAJAN GANESAN
TDC 904088
Roach Unit
Route 2, Box 500
Childress, Texas 79201

Signed//: A. Ganesan by N. von Kreisler
with permission
Apparajan Ganesan
PRO SE

OF COUNSEL
VON KREISLER & SWANSON, P.C.
610 West Lynn
Austin, Texas 78703
(512) 472-1494
Facsimile: (512) 478-4936

By: signed//: N v Kreisler
Nicolai von Kreisler
SBN 20616500

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on this 22 day of July, 2002.

William D. Powers
Piper & Powers, LLP
2206 Lake Austin Blvd.
Austin, Texas 78703
Facsimile: 472-5427

Elizabeth G. Bloch
Hilgers & Watkins, P.C.
98 San Jacinto Blvd.
Suite 1300, San Jacinto Center
P.O. Box 2063
Austin, Texas 78768-2063
Facsimile: 476-5139

Signed//: N v Kreisler
Nicolai von Kreisler

FILED
IN SUPREME COURT
OF TEXAS
JUL 23 2002
ANDREW WEBER, Clerk
By:_____ Deputy

02-0520

CAUSE NO. 02-0520

APPARAJAN GANESAN,	§	**IN THE**
Petitioner	§	
	§	
vs.	§	**SUPREME COURT**
	§	
SUDHA VALLABHANENI	§	
Respondent	§	**OF TEXAS**

APPENDIX TO PETITION FOR REVIEW

Petitioner APPARAJAN GANESAN submits the following appendix to Petitioner's petition for review.

1. Interlocutory Judgment in Cause no. 96-14089: *In* the Matter *of* Marriage *of Sudha Vallabhanenei and Apparajan Ganesan;* in the 353th Judicial District, District Court, Travis County, Texas.

2. Final Decree of Divorce in Cause no. 96-14089: *In* the Matter of Marriage *of Sudha Vallabhanenei and Apparajan Ganesan;* in the 353th Judicial District, District Court, Travis County, Texas.

3. Judgment and Opinion in Cause No. 03-01-00288-CV: *Apparajan Ganesan v. Sudha Vallabhaneni;* Texas Court of Appeals, Third District, At Austin.

Respectfully submitted,
APPARAJAN GANESAN
TDC 904088
Roach Unit
Route 2, Box 500
Childress, Texas 79201

Signed//: A. Ganesan by
N. von Kreiseler with permission
Apparajan Ganesan
PRO SE

[This NOTE is not part of "APPENDIX TO PETITION FOR REVIEW":
Items 1-3 of the Appendix to Petition for Review are reprinted in Appendix D of the Writ of Certiorari and therefore are not reprinted in this Appendix.]

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on this 23 day of July, 2002.

William D. Powers
Piper & Powers, LLP
2206 Lake Austin Blvd.
Austin, Texas 78703
Facsimile: 472-5427

Elizabeth G. Bloch
Hilgers & Watkins, P.C.
98 San Jacinto Blvd.
Suite 1300, San Jacinto Center
P.O. Box 2063
Austin, Texas 78768-2063
Facsimile: 476-5139

Signed//: N v Kreisler
Nicolai von Kreisler

1D

MANDATE

THE STATE OF TEXAS

TO THE 353RD DISTRICT COURT OF TRAVIS COUNTY, GREETINGS:

Trial Court Cause No. 96-14089

Before our Court of Appeals for the Third District of Texas on March 21, 2002, the cause on appeal to revise or reverse your judgment between

Apparajan Ganesan

No. 03-01-00288-CV v.

Sudha Vallabhaneni

Was determined, and therein our Court of Appeals made its order in these words

THIS CAUSE came on to be heard on the record of the court below, and the same being considered, because it is the opinion of this Court that there was no error in the trial court's judgment: **IT IS THEREFORE** considered, adjudged and ordered that the judgment of the trial court is in all things affirmed. It is **FURTHER** ordered that the appellant pay all costs relating to this appeal, both in this Court and the court below; and that this decision be certified below for observance.

Wherefore, we command you to observe the order of our Court of Appeals in this behalf and in all things have the order duly recognized, obeyed, and executed.

Witness the Honorable Marilyn Aboussie, Chief Justice of the Court of Appeals for the Third District of Texas, with the seal of the Court affixed in the City of Austin on October 21 , 2002.

DIANE O'NEAL, CLERK

By: Stephen W. unreadable

3D

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

JUDGMENT RENDERED MARCH 21, 2002

NO. 03-01-00288-CV

Apparajan Ganesan, Appellant
v.
Sudha Vallabhaneni, Appellee

APPEAL FROM 353RD DISTRICT COURT OF TRAVIS COUNTY BEFORE CHIEF JUSTICE ABOUSSIE, JUSTICES YEAKEL AND PURYEAR AFFRIMED –OPINION BY CHIEF JUSTICE ABOUSSIE

THIS CAUSE came on to be heard on the record of the court below, and the same being considered, because it is the opinion of this Court that there was no error in the trial court's judgment: **IT IS THEREFORE** considered. adjudged and ordered that the judgment of the trial court is in all things affirmed. It is **FURTHER** ordered that the appellant pay all costs relating to this appeal, both in this Court and the court below; and that this decision be certified below for observance.

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-01-00288-CV

Apparajan Ganesan, Appellant

v.

Sudha Vallabhaneni, Appellee

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 353RD JUDICIAL DISTRICT NO. 96-14089, HONORABLE MARGARET A. COOPER, JUDGE PRESIDING

Appellant Apparajan Ganesan appeals the district court's interlocutory order that he and Sudha Vallabhaneni were married at common law, as well as the subsequent final decree of divorce dividing their marital estate. In three issues, appellant contends that: (1) he is entitled to a new trial because the record of the six-day jury trial resulting in the common law ruling is incomplete; (2) the district court erred in rendering a judgment of common law marriage; and (3) the district court erred in the characterization and division of the parties' property in the final divorce decree. We will affirm the judgment of the district court.

BACKGROUND

In 1994, Ganesan responded to Vallabhaneni's matrimonial advertisement in a magazine, and the two began a relationship. Soon after, the couple began contemplating a formal marriage. During the third week of February 1995,

Vallabhaneni moved from California to live with Ganesan in Austin. At times throughout the relationship, the parties publicly held themselves out to be married.

In August 1996, the couple separated, and Vallabhaneni sought a protective order against Ganesan. Ganesan violated the protective order, and while serving a fourteen-day sentence, he solicited another inmate to have Vallabhaneni murdered. In 1997, Ganesan filed for bankruptcy, and during negotiations he solicited a second individual to have Vallabhaneni and her attorney murdered. Ganesan was convicted of two counts of solicitation to commit murder, and this Court affirmed that conviction relating to acts against Vallabhaneni. *See Ganesan v. State*, 45 S.W.3d 197 (Tex. App.--Austin 2001, pet. ref'd).

The parties tried the common law marriage issue to a jury and thereafter tried the remaining issues before the court. In January 1998, the district court rendered interlocutory judgment on the jury's verdict that Vallabhaneni and Ganesan were married at common law on February 23, 1995. On February 21, 2001, the district court signed a final decree of divorce.

DISCUSSION

Incomplete Reporter's Record

In his first issue, appellant argues that because the record of the jury trial is incomplete, he is entitled to a new trial. *See* Tex. R. App. P. 34.6(f). The jury trial began September 8, 1997, and lasted six days. The court reporter destroyed the notes and tapes of the proceedings for September 9 and 10 after the expiration of three years. Ganesan did not request

that the reporter prepare the record until May 2001. The two missing days included appellee's testimony during the jury trial portion of the cause.

Court reporters are permitted to destroy records after three years. *See* Tex. Gov't Code Ann. § 52.046(a)(4) (West 1998); *see also Piotrowski v. Minns*, 873 S.W.2d 368, 370 (Tex. 1993) ("By negative implication, the statute authorizes reporters to cull stale notes from their records after three years from the date on which they were taken."). Ganesan argues he is entitled to a new trial because he "timely requested" the record and it was lost or destroyed "without appellant's fault." *See* Tex. R. App. P. 34.6(f).

The Texas Supreme Court has expressly held that "[i]f a litigant has not requested the reporter to prepare a statement of the facts within three years, nor specifically requested that the notes of a proceeding be preserved beyond three years, then the litigant is not free from fault . . . ." *See Piotrowski*, 873 S.W.2d at 371. Because Ganesan could have requested the reporter to prepare the record within three years of the proceeding, or at minimum requested that the record be preserved, he is not free from fault. Accordingly, he is not entitled to a new trial. *See id.* at 370 (holding appellant is not entitled to a new trial unless the reporter's notes have been lost or destroyed *without appellant's fault* and the parties cannot agree on a statement of facts).[1]

Appellant argues that his request for the reporter's record was timely because it was made "at or before the time for perfecting appeal." *See* Tex. R. App. P. 34.6(b)(1). Rule

[1] Appellant concedes that he is unable to provide authority for the proposition that his bankruptcy proceeding stayed the limitations period for his record request.

34.6(f) clearly requires a timely request and loss or destruction of the reporter's notes without appellant's fault before he is entitled to a new trial. *See* Tex. R. App. P. 34.6(f)(1)&(2). Because appellant is not free from fault, the fact that his request may have been timely under Rule 34.6(b)(1) is irrelevant. Accordingly, we overrule appellant's first issue.

Jury Charge

In his second issue, appellant argues that the district court erred by: (1) failing to properly instruct the jury on common law marriage, and (2) refusing to admit into evidence a letter from appellee's mother suggesting a possible future marriage date.

The standard of review for error in the jury charge is abuse of discretion. *Texas Dep't of Human Servs. v. E. B.*, 802 S.W.2d 647, 649 (Tex. 1990). A trial court abuses its discretion only when it acts without reference to guiding rules or principles. Id. To determine whether an alleged error in the jury charge requires reversal, the reviewing court must consider the pleadings of the parties, the evidence presented at trial, and the charge in its entirety. *Island Recreational Dev. Corp. v. Republic of Tex. Sav. Ass'n*, 710 S.W.2d 551, 555 (Tex. 1986); *Allen v. Allen*, 966 S.W.2d 658, 660 (Tex. App.--San Antonio 1998, pet. denied). Alleged error will be deemed reversible only if, when viewed in light of the totality of the circumstances, it amounted to such a denial of the rights of the complaining party as was reasonably calculated and probably did cause the rendition of an improper judgment. Tex. R. App. P. 44.1(a)(1); *In re A.V.*, 57 S.W.3d 51, 62 (Tex. App.--Waco 2001, no pet.).

Ganesan complains of the district court's instruction to the jury regarding common law marriage. Section 2.401(a)(2) of the Family Code provides that "the marriage of a man and woman may be proved by evidence that . . . the man and woman agreed to be married and after the agreement they lived together in this state as husband and wife and there represented to others that they were married." Tex. Fam. Code Ann. § 2.401(a)(2) (West 1998). The jury instruction in the present case tracks the language of the code: "A man and a woman are married if they agreed to be married and after the agreement they lived together in Texas as husband and wife and there represented to others that they were married." Based on this instruction, the jury found that appellant and Vallabhaneni were married as of February 23, 1995.

The district court rejected the following set of instructions submitted by appellant:

> Living Together in Texas. An agreement to marry in the future, coupled with cohabitation, will not establish a marriage. *Leal v. Moreno*, 733 S.W.2d 322 (Tex. App.--Corpus Christi 1987). Merely living with a person of the opposite sex and having a sexual relationship with that person is not enough to establish a marriage. *Thompkins v. State*, 774 S.W.2d 195 (Tex. Crim. App. 1987).
>
> Representation to Others. The element of representing to others is not satisfied by an occasional uncontradicted reference to a cohabitant as "my wife" or "my husband" or "mine." Such statements will not prove a tacit agreement to be married without corroboration. Statements referencing someone as their "husband" or "wife" made in a self-serving context do not have to be taken as true statements

when determining if the parties had an agreement to be married. *Russell v. Russell*, 865 S.W.2d 929 (Tex. 1993).

Continuity of Existence of Marriage. One cannot both declare to be single and married. A party cannot drop in and out of marriage based on the financial opportunities or advantages that status presents on different days. *Fuentes v. Transamerica Nat'l Gas Corp.*, 933 S.W.2d 624 (Tex. App.--San Antonio 1996, n.w.h.).[2]

Appellant contends that because the evidence supported the submission of these instructions to the jury, the trial court erred by not giving them. We disagree.

Trial courts are charged with submitting "such instructions and definitions as shall be proper to enable the jury to render a verdict." *St. Joseph Hosp. v. Wolff*, 999 S.W.2d 579, 586 (Tex. App.--Austin 1999, no pet.). The trial court's latitude in this area is even greater than in the area of jury questions. *Oadra v. Stegall*, 871 S.W.2d 882, 889 (Tex. App.--Houston [14th Dist.] 1994, no writ). "If the charge resolves the controlling issues raised by the pleadings and any evidence in a feasible manner that does not confuse the jury, no error occurs." *Connell Chevrolet Co. v. Leak*, 967 S.W.2d 888, 894 (Tex. App.-- Austin 1998, no pet.). In the present case, the district court's instruction made it clear to the jury that it could find the parties were informally married only if it found: (1) an agreement to be married, (2) after the agreement, the couple lived together in Texas as husband and wife, and (3) the couple represented to others that they

[2] Appellant relies on Justice Rickoff's concurring opinion in *Fuentes*.

were married. *See Russell v. Russell*, 865 S.W.2d 929, 932 (Tex. 1993). This instruction is consistent with both the applicable Family Code provision and the Texas Pattern Jury Charge. *See* Tex. Fam. Code Ann. § 2.401(a)(2); Comm. on Pattern Jury Charges, State Bar of Tex., *Texas Pattern Jury Charges* Family PJC 201.4A (2000). As such, we cannot say that the district court's instruction amounted to an abuse of discretion. *St. Joseph Hosp.*, 999 S.W.2d at 586.

Even if the district court's failure to give the instruction constituted error, however, appellant does not contend that the charge amounted to such a denial of his rights as was reasonably calculated and probably did cause the rendition of an improper judgment. *See* Tex. R. App. P. 44.1(a)(1). Ganesan argues his proposed instruction "would have helped the jury evaluate the evidence regarding the parties' agreement [to be married]," and that "[w]ithout the instructions, the jury could minimize or ignore the evidence [that Ganesan and Vallabhaneni contemplated a future marriage]." In effect, Ganesan tendered the instruction so the court could provide the jury guidance on the weight to give the evidence, which would have been an impermissible comment by the trial court. *See* Tex. R. Civ. P. 277. Therefore, any error in the charge does not merit reversal because there has been no showing that it was reasonably calculated and probably did cause rendition of an improper judgment. *See Passons*, 969 S.W.2d at 563. Accordingly, we overrule Ganesan's complaint.

Exclusion of the Evidence

Appellant contends that the district court erred by sustaining appellee's objection to the admission of a letter into evidence. Appellant testified that the letter was sent by Vallabhaneni's mother suggesting an appropriate time for a

formal marriage ceremony. Because appellant could not testify to the fact that the letter was in the mother's handwriting, appellee objected to its admission on the ground that it had not been properly authenticated. The district court sustained the objection.

The admission or exclusion of evidence is committed to the trial court's sound discretion. *City of Brownsville v. Alvarado*, 897 S.W.2d 750, 753 (Tex. 1995). A party seeking to reverse a judgment based on the admission or exclusion of evidence must show that the evidence was erroneously admitted or excluded and that the error probably caused rendition of an improper judgment. *Id.; see also* Tex. R. App. P. 44.1(a)(1); Tex. R. Evid. 103(a). A successful challenge to evidentiary rulings usually requires the complaining party to show the judgment turns on the particular evidence excluded or admitted. *Alvarado*, 897 S.W.2d at 753-54. We determine whether the case turns on the evidence excluded by reviewing the entire record. *Id.* at 753.

The only authority cited by appellant in his discussion of this issue is Texas Rule of Evidence 901(b)(4),[3] which provides that the authentication requirement can be met by "appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances." Tex. R. Evid. 901(b)(4). However, the record reflects that appellant failed to make this argument to the trial court; appellant's response to appellee's objection was limited to the contention that the letter was not being offered for its truth, but as a reflection of the state of mind of appellee's family. Because appellant did not present this argument to

[3] Appellant cites Rule "901(4)"as authority for this contention; we assume he refers to Rule 901(b)(4).

the trial court, he cannot make it on appeal. Tex. R. App. P. 33.1. Accordingly, we overrule the issue.[4]

Legal and Factual Sufficiency of the Evidence

Appellant challenges the factual sufficiency of the evidence supporting the jury's finding that the parties were married. He further challenges the legal and factual sufficiency of the evidence supporting the jury's finding that the parties' informal marriage occurred on February 23, 1995. In his third issue, Ganesan challenges the factual sufficiency of the evidence to support the district court's distribution of the marital estate.

> [W]hen an appellant complains of the factual or legal sufficiency of the evidence, the appellant has the burden to show that the judgment is erroneous, and this burden cannot be discharged in the absence of a complete or agreed statement of facts; rather, "it is presumed that the omitted evidence supports the trial court's judgment."

Kwik Wash Laundries, Inc. v. McIntyre, 840 S.W.2d 739, 741-42 (Tex. App.--Austin 1992, no writ); *see also Englander Co. v. Kennedy*, 428 S.W.2d 806, 807 (Tex. 1968). Because Ganesan failed to file a complete reporter's

[4] On appeal, appellant restates his argument that the letter should be admitted as a reflection of the family's state of mind; however, appellant cites no authority for his position, and his issue is overruled accordingly. *See* Tex. R. App. P. 38.1(h). In any event, we question how the state of mind of appellee's family is relevant to prove the parties' mutual agreement to be married.

record or agreed statement of the facts, his factual and legal sufficiency challenges must fail. *See id.*[5]

Even in the absence of a complete reporter's record, the partial record before us reflects factually sufficient evidence to support the finding that the parties were informally married, as well as the district court's division of marital property. The record further reflects legally and factually sufficient evidence to support the finding that the parties' informal marriage occurred on February 23, 1995. To review the evidence under a no-evidence point, we consider all the evidence in the light most favorable to the prevailing party, indulging every reasonable inference in that party's favor. *Leal v. Texas Dep't of Protective & Regulatory Servs.*, 25 S.W.3d 315, 321 (Tex. App.--Austin 2000, no pet.). We will uphold the finding if more than a scintilla of the evidence supports it. *Garza v. Alviar*, 395 S.W.2d 821, 823 (Tex.

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[5] While appellant does not make the argument, we note that *Englander* and *McIntyre* predate current Rule of Appellate Procedure 34.6(c)(4), which provides:

> The appellate court must presume that the partial reporter's record designated by the parties constitutes the entire record for purposes of reviewing the stated points or issues. This presumption applies even if the statement includes a point or issue complaining of the legal or factual insufficiency of the evidence to support a specific factual finding identified in that point or issue.

Tex. R. App. P. 34.6(c)(4). One court of appeals has observed, "Rule 34.6(c) allows appellant to request a partial reporter's record in order to minimize the expense and delay associated with the appellate process." *Jaramillo v. Atchison, Topeka & Santa Fe Ry. Co.*, 986 S.W.2d 701, 702 (Tex. App.--Eastland 1998, no pet.). Ganesan did not designate a partial reporter's record, and the policy consideration of minimizing expense and delay does not apply here. Because appellant simply neglected to request or preserve the reporter's record, Rule 34.6(c)(4) is not applicable.

1965); *In re King's Estate*, 244 S.W.2d 660, 661 (Tex. 1951). The evidence supporting a finding amounts to more than a scintilla if reasonable minds could arrive at the finding given the facts proved in the particular case. *Id.; Brigham v. Brigham*, 863 S.W.2d 761, 762 (Tex. App.--Dallas 1993, writ denied).

When reviewing a jury verdict to determine the factual sufficiency of the evidence, we must consider and weigh all the evidence and should set aside the judgment only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); Leal, 25 S.W.3d at 321; *Brigham*, 863 S.W.2d at 762-63. We will not substitute our judgment for that of the trier of fact merely because we reach a different conclusion. *Leal*, 25 S.W.3d at 321.

As the basis for his challenge to the finding that the parties were informally married, appellant refers to his trial testimony in which he indicates that he only agreed to a future marriage to Vallabhaneni and recounts the occasions on which their attempts to be formally married failed. Appellant also points to the testimony of Kevin Leverenz, a police officer with the Austin Police Department. Leverenz testified that he responded to a domestic disturbance call at appellant's residence in August 1995 and that appellee repeatedly complained that Ganesan had brought her to Austin under false pretenses of becoming his wife. Ganesan further points to appellee's immigration documentation in which she holds herself out as single. Appellant dismisses all other conflicting evidence in the record as "indirect" and concludes that "[i]n the absence of Vallabhaneni's testimony, the evidence of record surely preponderates against the jury's finding that there was a common law marriage."

Appellee responds by providing numerous citations to the record before us which indicate the existence of an informal marriage, including the following: (1) Ganesan testified under oath in a deposition in November 1995 that appellee was his common law wife; (2) Ganesan referred to appellee as his wife in a letter signed by both parties; (3) appellee referred to Ganesan as her husband in a letter to the Consulate General of Switzerland; and (4) appellee referred to Ganesan as her common-law husband in her request for protective order. After reviewing the evidence contained in the incomplete record, we cannot say that the judgment is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Accordingly, we overrule appellant's issue.

Appellant contends that the evidence is legally and factually insufficient to support the jury's finding that the parties' informal marriage occurred on February 23, 1995. However, it is undisputed that the parties began living together in Austin during the third week of February 1995. Accordingly, we conclude that there is more than a scintilla of evidence to support the jury's finding, and we cannot say that the judgment is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust; therefore, we overrule appellant's complaint.

Appellant contends that the evidence is factually insufficient to support the district court's finding that he failed to overcome the presumption of community property as to certain retirement and brokerage accounts and a ranch. "Property possessed by either spouse during or on dissolution of marriage is presumed to be community property." Tex. Fam. Code Ann. § 3.003(a) (West 1998). "The degree of proof necessary to establish that property is separate property is clear and convincing evidence." *Id.* § 3.003(b) (West

1998). Clear and convincing evidence is the degree of proof that will produce in the mind of the trier of fact a firm belief or conviction about the allegations sought to be established. *See Tarver v. Tarver*, 394 S.W.2d 780, 783 (Tex. 1965); *Ellebracht v. Ellebracht*, 735 S.W.2d 658, 659 (Tex. App.--Austin 1987, no writ). To overcome this presumption, the spouse claiming separate property must trace and clearly identify the property claimed to be separate. *See Whorall v. Whorall*, 691 S.W.2d 32, 35 (Tex. App.--Austin 1985, writ dism'd) (citing *McKinley v. McKinley*, 496 S.W.2d 540 (Tex. 1973)). Tracing involves establishing the separate origin of the property through evidence showing the time and means by which the spouse originally obtained possession of the property. *See id.*

The record reflects that the only evidence appellant provided was his own testimony that he had certain accounts prior to his marriage to Vallabhaneni, out of which he made payments for the ranch, and several exhibits purporting to establish the separate nature of those accounts. However, Ganesan's testimony is limited to naming the institutions holding his accounts; neither his testimony nor the exhibits provide account numbers, statements of accounts, dates of transfers, amounts transferred in or out, sources of funds, or any semblance of asset tracing. The burden to overcome the statutory presumption was on Ganesan, and we cannot say that the district court's failure to find that he overcame the community property presumption is contrary to the overwhelming weight of the evidence so as to be clearly wrong and unjust. Accordingly, his issue is overruled.

Finally, appellant challenges the trial court's division of marital property. In the divorce decree, the trial court has the duty to order a just and right division of the parties' estate, having due regard for the rights of each spouse. Tex. Fam.

Code Ann. § 7.001 (West 1998). Appellant contends that there is insufficient evidence to support the district court's division of the community estate based on any disparity in income or earning potential. However, appellant does not point to and we are unaware of any indication in the district court's judgment or findings of fact and conclusions of law that the trial court's division of the property was based on disparity in income or earning potential. As such, we overrule his complaint.

CONCLUSION

We overrule all of Ganesan's complaints on appeal. We therefore affirm the judgment of the district court.

Marilyn Aboussie, Chief Justice

Before Chief Justice Aboussie, Justices Yeakel and Puryear

Affirmed

Filed: March 21, 2002

Publish

18D

NO. 96-14089

IN THE MATTER OF MARRIAGE OF	§	IN THE DISTRICT COURT,
	§	353RD JUDICIAL
SUDHA VALLAHHANENI AND APPARAJAN GANESAN	§	DISTRICT,
	§	TRAVIS COUNTY,
	§	TEXAS

INTERLOCUTORY JUDGMENT

On September 8, 1997, the Court took up for hearing the captioned cause.

Petitioner. SUDHA VALLABHANENI, appeared in person and by attorney of record AMY C. WRIGHT.

Respondent, APPARAJAN GANESAN, appeared in person and by attorney of record, WADE WILSON.

The record of testimony was duly reported by Betty Haygood, the court reporter for the 250th court.

By prior order of the court, issues presented in the captioned cause have been bifurcated for trial. Evidence and argument only an the matter of the existence of an informal marriage were taken up try the Court on September 8, 1997. All other issues, including the issue of attorneys'' fees, were reserved for further proceedings in the cause.

A jury was selected, all questions of fact were submitted to the jury, and a verdict was returned and duly filed.

The Court enters judgment on the Jury's verdict as follows:

Sudha, Vallabhaneni and Apparajan Ganesan were married at common law on February 23, 1995.

SIGNED on 1-20, 1998.

Signed:// John K. Dietz
JOHN DIETZ, District Judge

APPROVED AS TO FORM:

WRIGHT & LUNGWTIZ, P. C.
Attorneys at Law
109 E. 10th Street, Suite 200
Austin, Texas 73701-2419
Telephone: (512) 494-9000
Facsimile: (512) 494-8769
Signed:// Amy C. Wright
AMY C. WRIGHT
State Bar No. 22020750
Attorney for Petitioner

LAW OFFICE OF WADE WILSON
Attorney at Law
609 E. 9th Street
Austin, Texas 78701
Telephone: (512) 473-8373
Facsimile: (512) 472-1808
Signed:// Wade Wilson
WADE WILSON
State Bar No. 217 27700
Attorney for Respondent

GEORGE, DONALDSON & FORD
Attorneys at Law
114 W. 7th Street, Suite 1100
Austin, Texas 78701
Telephone: (512) 495-1400
Facsimile: (512) 499-0094

_____
Ben J. Cunningham
State Bar No. 05231950
APPROVED AS TO FORM:

WRIGHT & LUNGWTIZ, P. C.
Attorneys at Law
109 E. 10th Street, Suite 200
Austin, Texas 73701-2419
Telephone: (512) 494-9000
Facsimile: (512) 494-8769

AMY C. WRIGHT
State Bar No. 22020750
Attorney for Petitioner

LAW OFFICE OF WADE WILSON
Attorney at Law
609 E. 9th Street
Austin, Texas 78701
Telephone: (512) 473-8373
Facsimile: (512) 472-1808

WADE WILSON
State Bar No. 217 27700
Attorney for Respondent

GEORGE, DONALDSON & FORD
Attorneys at Law
114 W. 7th Street, Suite 1100
Austin, Texas 78701
Telephone: (512) 495-1400
Facsimile: (512) 499-0094
Signed:// B. J. Cunningham
Ben J. Cunningham
State Bar No. 05231950

NO. 96-14089

IN THE MATTER OF	§	IN THE DISTRICT
MARRIAGE OF	§	COURT,

	§	353RD JUDICIAL
SUDHA VALLAHHANENI	§	DISTRICT,
AND	§	TRAVIS COUNTY,
APPARAJAN GANESAN	§	TEXAS

FINAL DECREE OF DIVORCE

Bifurcation of Trial

The trial of this cause was previously ordered to be bifurcated. The initial hearing was ordered to determine the disputed issue of the existence of an informal marriage. In the event an informal marriage was found to exist, evidence and argument on all other issued would be heard at a subsequent trial.

I.
Judgment on Existence of a Marriage

1. Date of Hearing

On September 8, 1997, came on the be heard evidence and argument only on the matter of the existence of an informal marriage, District Judge John Dietz presiding.

2. Appearances

Petitioner, SUDHA VALLABHANENI, appeared in person and through attorney record. Amy C. Wright, and announced ready for vial.

Respondent, APPARAJAN GANESAN, appeared in person and through attorney of record, Wade Wilson.

3. Record

The record of testimony was duly reported by Betty Haygood, the court reporter for the 250th Court.

4. Jury

A jury *was selected, all questions of* fact were submitted to the jury, and a verdict was returned and duly filed.

5. Judgement

The Court entered judgement on the Jury's verdict as follows:

SUDHA. VALLABHANENI and APPARAJAN GANESAN were married at common law on *February 23, 1995.*

The Honorable John Dietz, District Judge of the 250th Judicial District Court, signed a judgement related to said finding by the jury, by order dated January 20, 1998.

All other issues, including the division of property and attorney's fees, were taken up at the final hearing mid the Court entered the following Orders:

II.
Judgment on All Other Issues

1. Date of Final Hearing

On November 6,2000, came to be heard evidence and argument on all other issues remaining in this cause of action, including the division of property and attorney's fees.

2. Appearances

Petitioner, SUDHA VALLABHANENI, appeared in person and through attorney record. William D. Powers, and announced ready for trial.

Respondent, APPARAJAN GANESAN, appeared in person and through attorneys of record, W. W. McNeal and Tim Whitten, and announced ready for trial.

3. Record

The record *of* testimony was duly reported by Jack L. Fuller, Certified Shorthand Reporter, 2702 5. Bagdad Rd., #127, Leander, Texas 78641.

4. Jurisdiction and Domicile

The Court finds that the pleadings of Petitioner are in due form and contain all allegations, information, and prerequisites required by law. The Court after receiving evidence, finds that it has jurisdiction of this case and of all the parties and that at least sixty days have elapsed since the date the suit was filed. The Court finds that, at the time the suit was filed, Petitioner had been a domiciliary of Texas for the preceding six-month period and a resident of the county in which this suit was filed for the preceding ninety-day period. All persons entitled to citation were properly cited.

5. Jury

A jury was waived and all facts of law were submitted to the Court.

6. Divorce

IT IS ORDERED AND DECREED that SUDHA VALLABHANENI, Petitioner, is granted a divorce from APPARAJAN GANESAN, Respondent, and the marriage between then is dissolved on the grounds of cruelty and conviction of felony.

7. Child of the Marriage

The Court finds that there is no child of the marriage of petitioner and Respondent and that none is expected.

8. Division of Marital Estate

The Court finds that the following is a just and right division of the parties' marital estate, having due regard for the rights of each party.

Property to Husband

IT IS ORDERED AND DECREED that the husband, APPARAJAN GANESAN, is awarded the following as his sole and separate property, and the wife is divested of all right, title, interest, and claim in and to that property:

H-1. The following real property, including but not limited to any escrow funds, prepaid insurance, utility deposits, keys, house plans, home security access and code, garage door opener, warranties and service contract., and title and closing documents:

a. 9005 South FM 973 S
Austin, Travis County, Texas 78719
15.43 Acres ABS 479, Survey 2, Lewis W

Travis County, Texas

H-2. All household furniture, furnishings, fixtures, goods, art objects, collectibles, appliances, and equipment in the possession of the husband or subject to his sole control.

H-3. All clothing, jewelry, and other personal effects in the possession of the husband or subject *to his sole* control.

H-4. All sums of cash in the possession of the husband or subject to his sole control, including funds on deposit, together with accrued but unpaid interest, in banks, savings institutions, or other financial institutions, which accounts stand in the husband's sole name or from which the husband has the sole right to withdraw funds or which are subject to the husband's sole control.

H-4. All sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases thereof, the proceeds therefrom, and any other rights related to any profit-sharing plan, retirement plan. Keogh plan, pension plan, employee stock option plan, 401 (k) plan, employee savings plan, accrued unpaid bonuses, disability plan, or other benefits existing by reason of the husband's past, present, or future employment, **including** but not limited to:

a. Cirrus 'Logic 401K pension Plan Account #078588917.

H-5. All individual retirement accounts, simplified employee pensions, annuities, and variable annuity life insurance benefits in the husband's name, save and except

those specifically awarded to SUDHA VALLABHANENI, herein:

H-6. All policies of life insurance (including cash values) insuring the husband's life.

Property to Wife.

IT IS ORDERED AND DECREED that the wife, SUDHA VALLABHANENI, is awarded the following as her sole and separate property, and the husband is di vested of all right, title, interest, and claim in and to that property:

W-1. All household furniture, furnishings, fixtures, goods, art objects, collectibles, appliances, and equipment in the possession of the wife or subject to her sole control.

W-2. All clothing, jewelry, and other personal effects in the possession of the wife or subject to her sole control.

W-3. All sums of cash in the possession of the wife or subject to her sole control, including funds on deposit, together with accrued but unpaid interest, in banks, savings institutions, or other financial institutions, which accounts stand in the wife's sole name or from which the wife has the sole right to withdraw funds or which are subject to the wife's sole control.

W-4. All sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases thereof, the proceeds therefrom, and any other rights related to any profitsharing plan, retirement plan, Keogh plan, pension plan, employee stock option plan, 401(k) plan, employee savings plan, accrued unpaid bonuses, disability

plan, or other benefits existing by reason of the wife's past, present, or future employment.

W-5. All individual retirement accounts, simplified employee pensions, annuities, and variable annuity lire insurance benefits in the wife's name.

W-6. The following IRA accounts currently held in the name of APPARAJAN GANESAN:

a. Charles Schwab SEP/IRA Account #2681-4260; and
b. Charles Schwab SEP/IRA Account #2681-4255.

IT IS ORDERED AND DECREED that Charles Schwab shall take all steps and measures necessary to transfer said funds in to SUDHA VALLABHANENI's name.

W-7. $12,960.81 from the MR. Block IRA Account #B6207898999, currently held in the name of APPARAJAN GANESAN.

IT 1S ORDERED AND DECREED that H&R Block shall take all steps and measures necessary to transfer said funds in to SUDHA VALLABHANENI's name.

W-8. All policies of life insurance (including cash values) insuring the wife's life.

W-9. All brokerage accounts, stocks, bonds, mutual funds, and securities registered in the wife's name, together with all dividends, splits, and other rights and privileges in connection with them.

W-10. All motor vehicles, titled in the wife's name, together with all prepaid insurance, keys, and title documents.

Attorney's Fee.

The court finds that S UDHA VALLABHANENI has incurred $25,000.00 as attorney's fees, which were necessary as support for SUDHA VALLABHANENI. IT IS ORDERED that SUDHA VALLABHANENI is awarded a judgement of $25,000.00 against APPARAJAN GANESAN as attorney's fees and expenses, with interest at 10 percent per year compounded annually from date of signing of this Final Decree of Divorce until paid, for which let execution issue.

Attorney's Fees on Appeal.

IT IS FURTHER ORDERED AND DECREED that SUDHA VALLABHANENI is awarded a judgement of $5,000.00 against APPARAJAN GANESAN for attorney's fees on appeal for the benefit of attorney, William D. Powers, together with all costs and expenses. The judgement shall bear interest at 10 percent per year compounded annually from the date of judgement, for which let execution issue.

1T IS FURTHER ORDERED AND DECREED that the judgement of attorney's fees on appeal rendered against APPARAJAN GANESAN is conditioned on the pursuit of an ultimately unsuccessful appeal.

Confirmation of Separate Property

IT IS ORDERED AND DECREED that the following described property is confirmed as the separate property of SUDHA VALLABHANENI:

1. Trust account in the name of S UDHA VALLABHANENI, established from the funds acquired per the bankruptcy settlement in Case No. 98-10295 FM-7, Chapter 7, In the United State Bankruptcy Court, Western District of Texas, Austin Division;

2. Brokerage account and subaccount in the name of SUDHA VALLABHANENI, established from funds transferred from trust account, which is more specifically described in enumerated separate property item number one (1);

3. Brokerage account in the name of SUDHA VALLABHANENI, established from funds transferred from trust account, which is more specifically described in enumerated separate property item number one (1);

4. Vehicle titled in the name of SUDHA VALLABHANENI, together with all prepaid insurance, keys, and title documents, purchased with funds from trust account, which is more specifically described in enumerated separate property item number one (1);

5. Vehicle titled in the name of SUDHA VALLABHANENI, together with all prepaid insurance, keys, and title documents, purchased prior to marriage;

6. Parcel of land in India, purchased prior to marriage;

7. Brokerage account, acquired prior to marriage, through wife's employment with Sun Microsystems;

8. IRA account, acquired prior to marriage, through wife's employment with Sun Microsystems;

9. All household furniture, furnishings, fixtures, goods, art objects, collectibles, appliances, and equipment in the possession of the wife or subject to her sole control; and,

10. All clothing, jewelry, and other personal effects in the possession of the wife or subject to her sole control.

Liability for Federal Income Taxes from Date of Marriage through Year of Divorce.

The Court finds that the parties have filed separate federal income tax returns since the date of marriage and have never filed jointly.

IT IS ORDERED AND DECREED that SUDHA VALLABHANENI shall be solely responsible for her own federal income tax liabilities from the date of marriage through the year of divorce, and shall timely pay any deficiencies, assessments, penalties, or interest due thereon and SUDHA VALLABHANENI shall indemnify and hold APPARAJAN GANESAN and his property harmless therefrom unless such additional tax, penalty, and/or interest resulted from SUDHA VALLABHANENI's omission of taxable income or claim of erroneous deductions. In such case, the portion of the tax, penalty, and/or interest relating to the omitted income or claims of erroneous deductions shall be paid by SUDHA VALLABHANENI.

IT IS ORDERED AND DECREED that APPARAJAN GANESAN shall be solely responsible for his own federal income tax liabilities from the date of marriage through the year of divorce, and shall timely pay any deficiencies, assessments, penalties, or interest due thereon and APPARAJAN GANESAN shall indemnify and hold SUDHA VALLABHANENI and his property harmless there from unless such additional tax, penalty, and/or interest resulted from APPARAJAN GANESAN's omission of taxable income or claim of erroneous deductions, In such case. the portion of the tax, penalty, and/or interest relating to the omitted income or claims of erroneous deductions shall be paid by APPARAJAN GANESAN.

Treatment/Allocation of Community Income for Year of Divorce.

IT IS ORDERED AND DECREED that, for the calendar year 2000, each party shall file a separate federal income tax return and, as part of the division of the estate of the parties, each party, relying on Section 66, internal Revenue Code of 1954, as amended, shall report al l income earned by that party in 2000 and shall claim all prepayments, withholdings, and deductible expenses actually paid by the reporting parry in that calendar year.

Petitioner shall timely pay, indemnify, and hold Respondent and his property harmless for any tax liability, and shall be entitled to claim any tax refund for overpayment of taxes, on her separate return calculated in the above manner. Respondent shall timely pay, indemnify, and hold Petitioner and her property harmless for any tax liability, and shall be entitled to claim any tax refund for overpayment of taxes, on his separate return calculated in the above manner.

No Alimony.

IT 1S ORDERED AND DECREED that no provision of this decree shall be construed as alimony under the Internal Revenue Code, except as this decree expressly provides for payment of maintenance or alimony under the Internal Revenue Code.

9. Court Costs

IT IS ORDERED AND DECREED that costs of court are to be borne by the party who incurred them.

10. Discovery Retention Requirement

IT IS ORDERED AND DECREED that any persons required to serve discovery materials shall, maintain, for a period of 12 months after this judgement is signed, the originals or exact copies of all discovery materials produced during the pendency of this matter and not filed with the Court.

If an appeal is **begun within** that I2-month period, IT IS FURTHER ORDERED AND DECREED that the discovery materials shall be maintained while the appeal is pending.

11. Clarifying Orders

Without affecting the finality of this Final Decree of Divorce, this Court expressly reserves the right to make orders necessary to clarify and enforce this decree.

12. Relief Not Granted

IT IS ORDERED AND DECREED that all relief requested in this case and not expressly granted is denied.

SIGNED ON February 21, 2001 at 2:15 P .M.

Signed:// Margaret A. Cooper
HONORABLE MARGARET COOPER
PRESIDING

APPROVED AS TO FORM ONLY:

PIPER & POWERS, L.L.P.
2206 Lake Austin Blvd.
Austin, Texas 78703
(512) 472-5060
(512) 472-5427 FAX

By: _____
William D. Powers
State Bar No. 16218900

Attorney for Petitioner,
SUDHA VALLABHANENI

McNEAL, GARNER & LIPPE, P.L.L.C.
Post Office Box 1259
Lockhart, Texas 78644
(512) 376-4534
(512) 398-9604 FAX

By: _____
W. W. McNeal
State Bar No. 13820000
Tim Whitten
State Bar No. 21391300

Attorneys for Respondent,
APPARAJAN GANESAN

NO. 03-01-00288-CV
IN THE COURT OF APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT AUSTIN, TEXAS

APPARAJAN GANESAN, Appellant
v.
SUDHA VALLABHANENI, Appellee

APPELLANT'S MOTION FOR REHEARING

TO THE HONORABLE THIRD COURT OF APPEALS:

Appellant, Apparajan Ganesan, submits this motion for rehearing in response to the opinion issued by the Court on March 21, 2002, and requests that the Court consider the following issues:

ISSUES PRESENTED FOR REVIEW

Issue 1: The Court erred in finding that there was no authority for the proposition that appellant's bankruptcy proceeding stayed the limitations period for his record request.

The Court notes that appellant conceded he was unable to provide authority for the proposition that his bankruptcy proceeding stayed the limitations period for his request for a transcript of the jury trial from the court reporter. Op., p. 3, n. 1. That is the extent of consideration, at least so far as the opinion reflects, of appellant's argument against his fault in the record's incompleteness. However, appellant relied on the statutory authority of the Bankruptcy Code and on the argument that the trustee retained the right to Ganesan's interest in the reporter's notes until the bankruptcy case was

terminated in December 2000, which was three years after the jury trial and in the month when the court reporter testified in her affidavit she may have destroyed her notes. Brief, p. 16.

Issue 2: The Court erred in finding that there was no harmful error in the trial court's failure to submit appellant's requested instructions to the jury.

The question with respect to the *jury* charge is whether the trial court's failure to accept the instructions appellant requested amounted to a denial of his right to a fair trial. Appellant submits that the question turns on the totality of the circumstances and, in particular, whether the evidence at trial required, in the interest of fairness, instructions that go beyond the statutory language of Tex. Fam. Code Ann. § 2.401(a)(2) and the general instruction of Texas Pattern Jury Charge. Obviously, there are circumstances where additional instructions should be given, and appellant submits that they are present in this case because of the welter of conflicting testimony, on both sides, on the issue of the agreement to be married.

If Appellant has read the court's opinion correctly, he must suggest, respectfully, that the court gave this issue rather short shrift. The court dismisses his argument with the conclusion that "appellant does not contend that the charge amounted to such a denial of his rights as was reasonably calculated and probably did cause the rendition of an improper judgment," citing Tex. R. App. P. 44.1(a)(1), and with the suggestion that all appellant's argument comes to is an effort to have the trial court, through the requested instructions, make an impermissible comment on the weight the jury should give the evidence. Op., p. 6.

That was hardly appellant's intent. Appellant argued that the failure to submit the requested instructions was "harmful error" and tried to suggest that, under circumstances where the nature of the agreement was fairly paramount as a result of the conflicting testimony of both parties, the harm was that the jury could not have evaluated the evidence, and answered the question before it, in light of applicable law. For this reason, appellant cited *Russell v. Russell, 865 S.W.2d* 929, 933-34 (Tex. 1993), to show that evidence of an agreement to be married was necessary and not merely evidence of cohabitation and public representation with a subsequent inference of the agreement. Brief, p. 23.

Issue 3: The Court erred finding that there was no harmful error in the trial court's sustaining the objection to the admission of appellee's mother's letter concerning a date for the parties' marriage.

Appellee's mother's letter would have been an important piece of evidence. Appellant submits that the issue is whether he preserved his right to appeal the exclusion of the letter by his response to appellee's objection as to authentication, which was that the letter reflected her family's state of mind about the couple's plans to get married. On appeal, Appellant did not argue that the letter should be admitted as a reflection of the family's state of mind. Cf. Op., p. *8,* n. 4. Appellant argues instead that even if trial counsel did not cite Tex. R. Ev. 901(b)(4), his response to the objection preserved the error because the family's state of mind, shown by the contents of the letter, meets the authentication requirement by "contents [and] substance, taken in conjunction with circumstances." In the letter appellee's

mother addressed the central issue of the trial, whether (and when) the couple would marry. It was obviously important and, appellant submits, should have been admitted.

For the reasons stated above, appellant asks the Court to grant this motion for rehearing, withdraw its opinion, and reverse and remand for a new trial.

Respectfully submitted,

VON KREISLER & SWANSON, P.C.
919 Congress Avenue, Suite 1000
Austin. Texas 78701
(512)472-1494
Facsimile: (512)478-4936
By: signed// N. v. Kreisler
Nicolai von Kreisler
State Bar No. 2061650

ATTORNEYS FOR APPARAJAN GANESAN, APPELLANT

CERTIFICATE OF CONFERENCE

Pursuant to Tex. R. Civ. App. 10.1(a)(5), the undersigned has conferred with counsel about the foregoing motion and counsel opposes the motion.

Signed//: N. v. Kreisler
Nicolai von Kreisler

CERTIFICATE OF SERVICE

Signature below certifies that a true and correct copy of the above and foregoing Appellat's Brief has been served by certified mail, return receipt requested, on this 5th day of April, 2002 to:

William D. Powers
Receipt No. 7001 0360 0001 0239 4134
Piper & Powers, L. L. P..
2206 Lake Austin Blvd. Austin, Texas 78703

Elizabeth G. Bloch
Receipt No. 7001 0360 0001 0239 4141
Hilgers & Watkins, P.C.
98 San Jacinto Blvd.
Suite 1300, San Jacinto Center P.O. Box 2063
Austin, Texas 78768-2063

Signed//: N. v. Kreisler
Nicolai von Kreisler

Appendix F – Chronology of Vallabhaneni's Declarations of Being Single

ATTACHMENT 1

Alleged Common Law Period Time Line

	Sept 94	First phone contact between the parties
Vallabhaneni (SV) claims ceremonial marriage. Claim is refuted by Temple priest.	Oct 94	
	Nov 94	
	Dec 94	
	Jan 95	
H&R Block in Calif. files SV's taxes as a "single." SV's mother writes letter suggesting June 1995 marriage.	Jan 95	
Vallabhaneni gets auto insurance as a single. Vallabhaneni moves to Austin, TX. Vallabhaneni applies for UK visa as a single.	Feb 95	Cohabitation begins
Vallabhaneni get bank	Mar 95	

account as a single.

Vallabhaneni swears to INS she is single. Apr 95

SV and Ganesan visit India. Ganesan does NOT stay at SV's mother's house Because they are NOT Married. May 95

Jun 95

Vallabhaneni renews Calif. driver's license and auto insurance as a single. Jul 95

Aug 95

Sept 95

Vallabhaneni takes job and tells employer she is single. Oct 95

Nov 95

Vallabhaneni opens bank account as single. Dec 95

Jan 96

Vallabhaneni introduced at ISSCC '96 as being single. Feb 96

Mar 96

Apr 96

May 96

Vallabhaneni renews passport as a single. — Jun 96

Jul 96

Vallabhaneni attends wedding as a single. — Aug 96

Sept 96 Cohabitation ends

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1F

LAW OFFICES
VON KREISLER & SWANSON
A PROFESSIONAL CORPORATION
610 WEST LYNN AUSTIN, TEXAS 78703
(512) 472-1494 TELEFAX--(512) 478-4936
November 27, 2002

Apparajan Ganesan
c/o Douglas Marsh
1031 Graham Street
Bethleham, PA.13015

Apparajan Ganesan
Sanders Estes Unit
1100 Hwy. 1807

Venus, Texas 76084

Re: INS agent's testimony and 2001 exams of the IRS agent

Dear Mr. Ganesan:

Enclosed please find the testimony of Rob Reyes, the INS agent and the exhibits that where introduced during his testimony.

We do not have the 2001 exams of the IRS agent. You might inquire with Karen Hill, she picked up the boxes pertaining to your case.

Very truly yours,

VON KREISLER & SWANSON, PC

Signed//: Molly Doherty

Molly Doherty
Legal Assistant to Nicolai von Kreisler

Enclosure

3F

RESIDENT ALIEN

U.S.DEPARTMENT OF JUSTICE-IMMIGRATION AND NATURALIZATION SERVICE

VALLABHANENI,SUDHA L
NAME

08 01 57
004

THUMB PRINT HERE

PHOTO HERE

A070778592
ALIEN NUMBER

11 24 03
CARD EXPIRES

Signed//: V L Sudha

ALIEN REGISTRATION RECEIPT CARD
PERSON IDENTIFIED BY THIS CARD ENTITLED TO RESIDE PERMANENTLY AND WORK IN THE U.S.

E37 SFR 930407 247 3307468035

A1USA070778592<01<9311<<<<<<<<<<<
5708013F0311247<<<<<<<<<<<EA181FE66
VALLABHANENI<<SUDHA<L<<<<<<<<<

U.S. Department of Justice
Immigration and Naturalization Service

AFFIDAVIT OF SUPPORT

(ANSWER ALL ITEMS : FILL IN WITH TYPEWRITER OR PRINT IN BLOCK LETTERS IN INK)

1. SUDHA VALLABHANENI residing at 8820 LEO ST
(Name) (Street and number)
AUSTIN TX 78745 USA
(city) (State) (Zip Code if in U.S.) (Country)

BEING DULY SWORN DEPOSE AND SAY:
1. I was born on 1st AUG 1957 at KURNOOL INDIA
(Date) (City) (Country)
If you are not a native born United States citizen, answer the following as appropriate :

a. If a United States citizen through naturalization, give certificate of naturalization number _____
b. If a United States citizen through parent(s) or marriage, give citizenship certificate number _____
c. If United States citizenship was derived by some other method, attach a statement of explanation.
d. If a lawfully admitted permanent resident of the United States, give "A" number A070778592

2. That I am 37 years of age and have resided in the United States since (date)19 JAN 1989.
3. That this affidavit is executed in behalf of the following person.

Name DEEPIKA PAVULURI Sex F Age 14
Citizen of (Country) INDIA Marital Status SINGLE
Relationship to Deponent DAUGHTER

Presently resides at (Street and Number) 9A RUKMINI DEVIETN, W. HARRED PALLY, (City) SECUNDERABA 500 026 (State) AP (Country) INDIA

Name of spouse and children accompanying or following to join person: NOT APPLICABLE

Spouse	Sex	Age	Child	Sex	Age
Child	Sex	Age	Child	Sex	Age
Child	Sex	Age	Child	Sex	Age

4. That this affidavit is made by me for the purpose of assuring the United States Government that the person(s) named in item 3 will not become a public charge in the United States.
5. That I am willing and able to receive, maintain and support the person(s) named in item 3. That I am ready and willing to deposit a bond, if necessary, to guarantee that such person(s) will not become a public charge during his or her stay in the United States, or to guarantee that the above named will maintain his or her nonimmigrant status if admitted temporarily and will depart prior to the expiration of his or her authorize stay in the United States.

6. That I understand this affidavit will be binding upon me for a period of three (3) years after entry of the person(s) named in item 3 and that the information and documentation provided by me may be made available to the Secretary of Health and Human Services and the Secretary of Agriculture who may make it available to a public assistance agency.

7. That I am employed as, or engaged in the business of SOFTWARE ENGINEERING
(Type of Business)

with GANESAN CONSULT
(Name of Concern)

at 8820 LEO ST AUSTIN TX 78745
(Street and Number) (City) (State) (Zip Code)

I derive an annual income of (if self employed, I have attached a copy of my last income tax return or report of commercial rating concern which I certify to be true and correct to the best of my knowledge and belief. See instruction for nature of net worth to be submitted. $ 69445

I have on deposit in savings banks in the United States $ 16710

I have other personal property, the reasonable value of which is $ 29000

I have stocks and bonds with the following market value, as indicated on the attached list which I certify to be true and correct to the best of my belief $ _____

I have life insurance (n the sum of $ _____
With a cash surrender value of $ _____
I own real estate valued at $ _____
With mortgages or other encumbrances thereon amounting to $ _____

Which is located at _____
(Street and Number) (City) (State) (Zip Code)

8. That the following persons are dependent upon me for support : (Place an "X" in the appropriate column to indicate whether the person named is wholly or partially dependent upon you for support.)

Name of person	Wholly Dependent	Partially Dependent	Age	Relationship to me
DEEPIKA PAVULURI	X		14	DAUGHTER

9. That I have previously submitted affidavit(s) of support for the following person(s) if none, state "None"

Name	Date Submitted
NONE	

10. That I have submitted visa petition(s) to the Immigration and Naturalization Service on behalf of the following person(s). If none, state None

Name	Relationship	Date Submitted
NONE		

11. (Fill in this block only if the person named in item 3 will be in the United States temporarily). That I [_] intend [_] do not intend, to make specific contributions to the support of the person named In item 3. If you check "do intend", indicate the exact nature and duration of the contributions For example, if you intend to furnish room and board, state for how long and, if money, state the amount in United States dollars and state whether it is to be given in a lumpsum, weekly, or monthly, or for how long).

NOT APPLICABLE

OATH OR AFFIRMATION OF DEPONENT

I acknowledge that I have read part III of the Instructions, Sponsor and Alien Liability and am aware of my responsibilities as an Immigrant sponsor under the Social

Security Act, as amended, and the Food Stamp Act, as amended:

I swear (affirm) that I know the contents of this affidavit signed by me and the statements are true and correct.
Signature of deponent signed:// V Sudha

Subscribed and sworn to (affirmed) before me this 12th day of JUNE ,1995 at _____. My commission expires on _____.

Signature of Officer Administering Oath_____Title_____

If affidavit prepared by other than deponent, please complete the following : I declare that this documents was prepared by me at the request of the deponent and is based on all information of which I have knowledge.

_____ _____ _____
(Signature) (Address) (Date)

FULL TESTMONY OF INS AGENT RON REYES

BOLD type font is placed by the petitioner

(In the presence of the Jury)
THE COURT: Mr. Wilson?
MR. WILSON: All right.

ROB REYES, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WILSON:

Q Would you please state your name?
A Yes, my name is Rob Reyes.
Q Mr. Reyes, where do you live?
A I live in San Antonio, Texas.
Q And how are you employed?
A I'm a special agent with the United States Immigration and Naturalization Service.
Q Okay. In conjunction with your position, do you have possession and control over documents of Ms. Sudha Vallabhaneni?
A Yes, sir, I do.
Q Okay. Have you brought the original file of those documents with you?
A Yes, I have them.
Q Okay. And do you have any documents submitted by Mrs. Vallabhaneni to Immigration and Naturalization Services on which she indicated her marital status?
A Yes, I have the complete file.
Q Okay. And what was that marital status, sir?
A She indicated she was a widow.

Q Okay. And when was that? Do you remember when she originally applied?

THE COURT: Are you asking when the document was generated?

MR. WILSON: Yes, sir. He has the original of these, Your Honor. Let's mark this, please.

Q I'm going to show you what's been marked as Respondent's Exhibit No. 12. Is that a duplicate of the original that you have in your file, sir?

A Yes, it is. This is a copy of the original.

Q Okay. And is there anything on this original document that indicates the marital status of Ms. Vallabhaneni?

A Yes. In Block No. 3, where it says "**Marital Status,**" it indicates that she's a **widow.**

Q Okay. And when was that generated, sir?

A The approval date was November 25th, 1994.

Q Thank you.

MR. WILSON: I'd like to offer what's been marked as Respondent's Exhibit No. 12, Your Honor.

THE COURT: Any objection?

MS. WRIGHT: May I take the witness on voir dire, Your Honor?

VOIR DIRE EXAMINATION

BY MS. WRIGHT:

Q The document that you've been shown, sir, has a notation "Following to join daughter, Deepika" -

A Yes.

Q -- "Pavuluri." Is this approval date -- does that relate to Deepika Pavuluri, or does that relate to the whole document, the original document that was filed?
A That particular approval relates to Deepika. However, that date has to -- the information in the document has to be original as to the initial documentation that was submitted during the initial process.
Q And the original application was submitted when?
A The original application, the same form, was submitted October 1st, 1993. But the approval dates were September 7th, '93, and then that date also.
Q Let me just make sure I understand this. This document was originally created sometime before September 7th, 1993. Is that right?
A 1993.
Q And then it was approved on September 1993. Is that right?
A Yes. The approval date was for Sudha.
Q Okay. And then there was an approval in November, on November 25th, 1994 for the daughter, Deepika. Is that right?
A That's correct.
Q Okay. So this document was not generated in 1994. It was 1993. But you're saying that the information had to be correct as of the later date as well?
A That's correct.

MS. WRIGHT: No further questions, Your Honor. And no objection.
THE COURT: Admitted.
(Respondent's Exhibit No. 12 admitted.)

DIRECT EXAMINATION RESUMED

BY MR. WILSON:

Q And in fact, was there a correction made to this document as late as November 25th, 1994?
A The original document and the document that you showed me just now is the same. The only difference would be the approval dates for the daughter.
Q Would there have been **required** that Ms. Vallabhaneni **make** any changes to her original application, such as change of address or **marital status**?
A **Absolutely.** Yes, sir.
Q And was that done?
A **No,** it was not.
Q Did she make any changes whatsoever?
A None at all.
Q Did she make changes to her address at any point?
A **There was an address change** submitted to us.
Q Okay. And what was that address change, sir?
A It was an address change that took place while they were residing in California. I have the form here.
Q Is this a copy of the form? This is the letter from her?
A Yes, it is.

MR. WILSON: Can I mark this, please?

Q I'm going to show you now what's been marked as Respondent's Exhibit No. 13. And can you identify that?
A This is a copy of a document that I have in my files.
Q And that indicates that Mrs. Vallabhaneni changes her address with you people occasionally. Right?
A Yes.

MR. WILSON: I'd like to offer this as Exhibit No. 13, Your Honor.

THE COURT: Any objection? MS. WRIGHT: No objection.
THE COURT: Admitted.
(Respondent's Exhibit No. 13 admitted.)

Q (BY MR. WILSON) **Do you make it clear to people that if they have a change in marital status that they should report that to you?**
A **Yes**, we do.
Q Did Ms. Vallabhaneni subsequently make an application to bring her child, Deepika Pavuluri, to the United States as a rider on her application?
A Yes, she did.
Q Would it have been -- **did she apply as a married person or as a single person?**
A As a **single** person.
Q Okay. And was it ever updated at any point?
A The immigration files that I have indicate that she's been a widower all along, **no marriage of any kind.**
Q Now, would it have been simpler if Ms. Vallabhaneni's case for her to have brought her daughter over under -- if she were married, under her husband's passport, if he were a citizen? I mean, under her husband's status as a citizen of the United States?
A If a spouse is a United States citizen and the intended immigrant is in the United States, then there is what we call a status change in which the foreigner, the alien, will not have to leave the country. They can stay in the country and change their status from, for example, a visitor or a student to that of permanent resident.
Q I'm going to show you now what's been marked as Respondent's Exhibit No. 14. Can you recognize that as a record that's in your file?

A Yes, sir, it is.
Q Okay. And can you describe what that is?
A Yes. The cover page here is a memorandum from an attorney, Robert -- Robinson, Robert NG, and Associates from California, indicating that the people worked for -- Deepika has been approved and for her to go before the consulate officer, the U.S. American Consulate officer in India so that they could apply for a Visa so she could come over to the United States.
Q Okay. And would you infer from that that she's represented by counsel in all this, that she has an attorney that's helping her for this application?
A Yes, sir, Mr. Robinson Robert NG and Associates.
Q Okay.

MR. WILSON: I'd like to offer what's been marked as Respondent's Exhibit No. 14 into evidence, Your Honor.
MS. WRIGHT: No objection.
THE COURT: Admitted.
(Respondent's Exhibit No.14 admitted)

Q (BY MR. WILSON) Okay. Now I'm going to show you what's been marked as Respondent's No. 13. Can you identify that?
A Yes. This is the affidavit of support from Sudha to Deepika, the dependent daughter.
Q And what is the date of that, sir?
A It's dated **June 12th, 1995**.
Q 1995. And the address on it is what, sir?
A The address is 8820 Leo Street in Austin, Texas.
Q Okay. And **who did Ms. Vallabhaneni list as her spouse** on that record?
A It indicated "**not applicable.**"

Q And **would you judge from that that she's not married**, or that she continues to be a widow?
A **Yes**. This affidavit of support is part of the file that was submitted as to the form that we just talked about, the Visa petition.
Q Is this affidavit of support **made under oath**, sir?
A **Yes**, it is.
Q And is it **signed by Ms. Vallabhaneni** on the third page?
A **Yes**, it is.
Q Does the INS require aliens who are here on a green card to report any possible source of income when they're making application for someone to come into the United States?
A It's the affidavit of support. It's required that they submit **all the support from their positions, employment, or a spouse** if they have a position also.
Q **So a spouse should have been listed there if she were married**?
A **Yes**, sir.
Q And a spouse is not listed there?
A No. The affidavit of support supports the previous document, which indicated that she was a widow. And so there's -- when we received this document and it indicated "not applicable," the information on the Visa was that she was a widow and so we didn't challenge that.
Q What is the INS position about notifying them of status changes, such as marital, address, employment, or any other change?
A **We have to have any type of changes** in addresses or status of that person.
Q And **do you-all consider that serious**?
A **Yes**, we do.

MR. WILSON: Let me offer into evidence, Your Honor, what's been marked as Respondent's Exhibit Nos. 14 and 15.

MS. WRIGHT: I'm sorry, the Affidavit of Support and what else?

MR. WILSON: The letter from the attorney.

MS. WRIGHT: No objection.

THE COURT: Admitted.

(Respondent's Nos. 14 and 15 admitted.)

MR. WILSON: And may I publish this to the Jury? And I will pass the witness, Your Honor.

THE COURT: Ms. Wright?

CROSS-EXAMINATION

BY MS. WRIGHT:

Q Mr. Reyes, if someone says to you in the process of filling out immigration papers that they are common-law married, will you just take their word for it?

A When they indicate that they're **common-law married**, we need to have **some kind of support, an affidavit, a document** to show that. In most cases, the United States Immigration Service in Texas will accept that, a common-law marriage, but **we need to have some sort of a documentation** issued by either a court or perhaps the two parties in agreement, signed and notarized.

Q So you would need a document signed by both of these parties and submitted to INS in order to change the status as indicated on an INS file?

A As soon as the parties, or one of the parties indicates that there's been a marriage, or a common-law marriage, the file will be in suspense until that area is

clarified. And we use whatever the code is for the State of Texas on common-law marriage.

Q Could they have -- could Ms. Vallabhaneni have moved forward with her daughter's immigration to the United States if her own file was in suspense?

A If her file was in suspense, she wouldn't have been able to move to the United States.

Q Do you remember Ms. Vallabhaneni?

A I've never seen her until just a few minutes ago.

Q And were you anywhere around when she filled out the document that's been submitted here today?

A These documents were submitted from the California office of the Immigration Service, to an attorney, Robinson Robert NG. I was not there.

Q Okay.

MS. WRIGHT: No further questions.

REDIRECT EXAMINATION

BY MR. WILSON:

Q Sir, the United States Government recognizes common-law marriages. Is that right?

A Yes, we do.

Q And **you** would **expect someone common-law married**, whether or not they've got a certificate or not, **to** come up and **inform you** -

A **Absolutely**.

Q -- of a common-law marriage?

A **Yes**.

Q And **if she had been married to Mr. Ganesan** here and applied as a citizen of the United States, **it would have expedited her bringing her daughter over here**?

A **Yes**, it would have.

Q You would have simply told her to go get the certificate. Right?
A Yes, that's correct.

MR. WILSON: Nothing further, Your Honor.
THE COURT: Ms. Wright?
MS. WRIGHT: No further questions.
THE COURT: Do any of the members of the juries have a question of this witness? I see a couple of hands.
(The jurors' questions were handed to the Judge and a Bench discussion occurred out of the hearing of the jury and court reporter.)

THE COURT: Okay, are you ready?
THE WITNESS: I'm ready.
THE COURT: "Does your office require, after the approval of an alien to become a citizen, to change marital status after becoming a permanent resident?"
THE WITNESS: **The Immigration Service requires** that **while you're a permanent resident** of the United States that **you tell us** where you live and what **your status is at all times** up until the time that you become a citizen of the United States. Once you're naturalized and become a citizen of the United States, then it's not required. These files are put away in storage and they're never seen again until they're asked for, for whatever reason.
THE COURT: "Do you send follow-up letters after a certain amount of time to get more information?"
THE WITNESS: No, we don't. **It's the responsibility of each person to let us know**. We have 200 million-plus files.

THE COURT: "Is it required by INS regulation to report **common-law marriages** as defined by the State of Texas?"

THE WITNESS: If they're submitting for some sort of a benefit through the Immigration Service, **we need to know about it.**

THE COURT: "On the affidavit of support, where is the marital status of Ms. Vallabhaneni listed?"

THE WITNESS: I'll have to check. It says "**Spouse** or Children," and it's as indicated "**Inapplicable,**" meaning that there was no spouse and no other children other than the ones listed on the front page.

THE COURT: "Did you follow up on Ms. Vallabhaneni's case before this court date?"

THE WITNESS: I requested the files be sent to me from the District Office in California. And once I received the files, I did what -- I reviewed the files to determine what was in those files as far as the application and the affidavits that were in there.

THE COURT: Let me see the attorneys for a second

(At the Bench, off the record)

THE COURT: "Do you actually check out the marital status, or do you take the word of an applicant?"

THE WITNESS: When we interview, **we take the word of the applicant**. If they tell us they're single or if they're married, they have to support that with documentation.

THE COURT: "Would Ms. Vallabhaneni have been given any indication by someone in your office that there were ways to move her case along at a faster pace?"

THE WITNESS: With the information that's in the file, this was the only way that she could immigrate the daughter.

THE COURT: "Well, for example, would she have been told that marrying would better her status here in the United States?"

THE WITNESS: I don't know. I don't make that a habit of telling anyone that, if they were to marry somebody, they could immigrate much quicker. She was immigrating because of her skills, not because of her marital status.

THE COURT: Any follow-up, Mr. Wilson? Any brief follow-up?

REDIRECT EXAMINATION

BY MR. WILSON:

Q But **it is the responsibility of everyone to let your office know** if there's been a change in the status?

A **Yes**, it is.

Q And it's considered a breach of their responsibility if they don't follow through with that?

A **If** they don't follow through with that and if it's serious enough to where some of **the information in those affidavits or the information that's in the file is not true, we could follow up with some sort of a penalty or prosecution.**

Q Do you think this is serious?

THE COURT: Excuse me, may I see the attorneys here? (At the Bench, off the record)

THE COURT: Anything else, Mr. Wilson?

MR. WILSON: No, sir.

THE COURT: Ms. Wright, any follow-up?

RECROSS-EXAMINATION

BY MS. WRIGHT:

Q You earlier indicated that if you received word, verbal communication from an applicant that indicated that there was a common-law marriage, the application would be placed in suspense. Is that right?

A If you come to our office and you're submitting a document for benefits, we review the document line by line, and we ask you the questions that you completed in the documents. And we ask you what your marital status is, marital status. And if you tell me that you are -- you're single, but you're common law, under a common-law marriage, or you are married or something like that, you would have to submit some sort of proof to show us that that, in fac, [SIC] has taken place. We will put your file, or your application -- we won't do anything with it, we won't approve it nor will we reject it. We'll just put it in suspense until we can continue on with the interview.

Q And during the period of suspense, you can't act on the benefits, like for instance, moving your daughter from India to the United States. Is that right?

A You would have to have an approval. And on these documents that we have here, you will notice the stamp of approval with a signature of an official by it.

Q Okay, and so that would mean you wouldn't have an approval, you'd be in suspense, awaiting approval. And until you got approval, you couldn't move the daughter from India to the United States?

A That's correct.

Q And the proof that you would need would be one of two things, a document signed by both parties or a court order. Is that right?

A You could have other documents, according to whatever the common-law marriage laws are in Texas.

Q And you said you had some examples of documents that you would expect to use for --

A If I was to receive a document from the Court indicating that the common-law marriage was proper, that would be enough for us to go ahead and continue on with the interview.

Q Okay. So if this jury finds a common-law marriage and the Court makes an order that there's a common-law marriage in this case, you can make a change in the file?

A It would be a little late, because the file had been adjudicated, depending on how far back you go. If the Court decides today that they were married way back prior to when she indicated that she was single, then there's a discrepancy in the application, and so we would have to act on it somehow. But if the Court finds that the common-law marriage took place after these documentations were submitted, then at the time that the documentation was submitted, then what was in these documents is true in that there she was -- her status was single because she was a widow, not married.

MS. WRIGHT: Okay. Thank you.

THE COURT: Thank you for your testimony. You are excused.

AFFIDAVIT FROM PLAINTIFF APPARAJAN GANESAN

Now comes plaintiff Apparajan Ganesan and states as follows:

Defendant Sudha Vallabhaneni fraudulently claimed a temple service attended by her and Mr. Ganesan on or about Nov. 24, 1994 at the Hindu temple in San Antonio (Archana) as a wedding ceremony. This claim is refuted by the Priest and the staff of the Venkatesnara Temple (Heliotes, Texas).

.

Defendant Vallabhaneni, on or about Feb 11, 1995, filed her California State tax return and her Federal tax return for 1994 through H&R Block declaring herself as a "single, head of household."

On or about May of 1995, Ganesan and Vallabhaneni visited England and India. Ms. Vallabhaneni, an Indian citizen, obtained a tourist visa for London, declaring herself as a "single."

When Ganesan and Vallabhaneni reached India, immigration approval for her daughter (from a prior marriage), Deepika Pavaluri, came through. Ganesan returned to Austin ten days later. In the subsequent month, Ms. Vallabhaneni, accompanied by her daughter Deepika Pavaluri, went to the U.S. Consulate in Madras, India, and made several sworn declarations regarding her marital status as "single." Rod Reyes, the INS agent who testified at the jury trial in the Travis County District Court in Sept. 1997, produced these documents.

Ms. Vallabhaneni declared herself as a "single" to her employer, who then denied health insurance to her unmarried partner Apparajan Ganesan.

On or about April 1996, Ms. Vallabhaneni filed her California partial resident tax return and her Federal tax as "single." Ganesan assisted her in the preparation of those tax returns.

On or about May 1996, Ms. Vallabhaneni decided to renew her Indian Passport. First, she filed her renewal form as a "single" with the Indian Consulate in San Francisco. Then, she re-filed the renewal declaring herself as a "single" with the Indian Consulate in Houston. When her new Passport arrived, Ms. Vallabhaneni checked it carefully for accuracy. Ms. Vallabhaneni noted an error in her birth date but saw nothing wrong with her marital status as "single." Yet again, when she had her Passport corrected for the birth date error, she again declared herself as "single."

On or about March 1997, Ms. Vallabhaneni filed her Federal tax returns for 1996, declaring herself a "single." H&R Block of Austin assisted her.

Throughout the entire period, Ms. Vallabhaneni opened several bank accounts declaring her marital status as "single." Also, through the entire period, Ms. Vallabhaneni made declarations in her auto insurance and life insurance forms that she was "single."

Ms. Vallabhaneni made numerous other assertions regarding her marital status as during the entire period. Ganesan has restricted this affidavit to instances where clear violations of Federal Laws of immigration, passport, insurance, and

banking would occur if Ms. Vallabhaneni's common law marriage claim is upheld.

Ganesan alleges that Ms. Vallabhaneni and her siblings entered into a vendetta against him because of centuries old caste prejudices between the Kamma and Brahmin communities. Prosecutors for Travis County repeatedly alleged this to the jury in the case the State lost against Ganesan on July 5, 2001, County Court III, Hon. Judge David Crain presiding, Case No. 492428 (all Court Reporter notes have been saved).

A fraud has been executed to deprive Ganesan of his wealth.

Ganesan asserts that a person cannot be both "single" and "married" at the same time.

Ganesan declares under penalty of perjury that the forgoing is true.

Signed:// Apparajan Ganesan
Apparajan Ganesan
TDCJ# 904088

Physical address:
Sanders Estes Unit
1100 Hwy. 1807
Venus Texas

Mailing Address:
C/O Douglas G. Marsh
1031 Graham St.
Bethlehem, PA 18015

NOTICE
INMATE NOTARY PUBLIC SERVICE

Under both Federal Law (28 U.S.C. §1716) and / or Texas State law (V.T.C.A. Civil Practice & Remedies Code, §132.001-132.003j, inmates incarcerated in Texas may use an Unsworn Declaration under penalty of perjury in place of a Written Declaration, Verification, Certification, Oath, or Affidavit Sworn before a Notary Public. An example of an Unsworn Declaration is as follows:

EXAMPLE ONLY

"I (insert offender name and TDCJ number), being presently incarcerated in (insert TDCJ Unit name), in (insert county name)_____ County, Texas, declare under penalty of perjury in pursuant of Federal Law (28 U.S.C. § 1746) and / or Texas State law (V.T.C.A. Civil Practice & Remedies Code, §132.001-132.003), that the foregoing is true and correct.

In a request for Notary Public service, each inmate must explain why an Unsworn Declaration is insufficient before Notary Public service will be provided.

NOTICE
NOTARY PUBLIC SERVICE DENIAL

Regarding your request for Notary Public service, insufficient justification was provided necessitating Notary Public service. However, you may proceed with an Unsworn Declaration.

On this the26th day, the month of NOVEMBER 2002, Offender Ganesan, Apparajan,TDCJ-ID# 904088 requested Notary Service for _____ and was denied as per Federal Law (28 U.S.C. § 1746) and / or Texas

State law (V.T.C.A. Civil Practice & Remedies Code § 132.001-132.003). He was subsequently given an Unsworn Declaration.

Signed:// Katherine McCoy 11/26/02
(Signature – Notary) (Date)

UNSWORN DECLARATION

I, Apparajan Ganesan , T.D.C.J.-ID# 904088, Petitioner, ProSe, being presently incarcerated at the Sanders Estes Unit, in Johnson County, Texas, declares under Penalty of Perjury that the foregoing instrument is true and correct to the best of my knowledge. Pursuant to Federal Law (28 U.S.C. § 1746) and State Law (V.T.C.A. Civil Practice and Remedies Code § 132.001 - 132.003). Executed on this day_____ of _____,20 _____.

Respectfully Submitted,

Signed:// Apparajan Ganesan
Petitioner, Pro Se

Alvis Carssow & Ingalls
5766 Balcones Drive, Ste. 201
Austin, Texas 78731

Attorneys
Tel: (512) 453-7290
Fax: (512) 302-0625

July 29, 1999

Honorable Sharon Pierce
U. S. Attorney's Office
816 Congress Ave., Ste. 1000
Austin, TX 78701

Dear Ms. Pierce:

I represent Apparajan Ganesan. Mr. Ganesan, a U. S. citizen, has been a successful businessman in this country for many years--until recently. Some time ago, Mr. Ganesan had a relationship with a Ms. Sudha Vallabhaneni, an Indian national in this country under a green card. The relationship ended and Ms. Vallabhaneni filed a lawsuit in Travis County alleging that she had been common-law married to Mr. Ganesan and requesting a divorce. Mr. Ganesan has vigorously contested the proceeding.

During the time of the alleged common-law marriage, and since she filed her lawsuit claiming a common-law marriage, Ms. Vallabhaneni represented her marital status as "single" in documents filed with the U.S. Immigration and Naturalization Service, as well as in tax returns filed with the Internal Revenue Service. She also represented herself as single with the U. S. State Department and with her employer.

In the divorce proceedings, an officer with the Immigration and Naturalization Service testified in substance that, based on the inconsistent position taken by Ms. Vallabhaneni in the

state court lawsuit and in her papers filed with the U.S. government, Ms. Vallabhaneni appeared to be doing something fraudulent in violation of the immigration laws and that she would get in trouble if she persisted. Since the time of that testimony, there does not appear to have been any action by either the Immigration and Naturalization Service or the Internal Revenue Service despite a number of meetings, telephone conferences and correspondence.

Essentially, the Immigration and Naturalization Service has stated that this matter does not rise to the level of importance required for their intervention. The Internal Revenue Service has likewise declined to become involved. My client believes that he is the victim of a fraud by Ms. Vallabhaneni, that she forced him into bankruptcy by interfering with a $900,000.00 payment to a Swiss subcontractor on a crucial business transaction, and that she has made false criminal allegations against him--he is in the Travis County Jail based on those allegations and is awaiting trial.

Mr. Ganesan has difficulty understanding how a foreign citizen can come into this country and do what Ms. Vallabhaneni has done with impunity, and without there being any apparent recourse through the agencies that are charged with the responsibility of investigating and enforcing the nation's immigration and tax laws. I told Mr. Ganesan I would write this letter to the U. S. Attorney's Office in hopes that his complaints might get some attention or priority that, so far, seems to have eluded him.

I would be delighted and anxious to give you or someone in your office more details if the U.S. Attorney's Office would like to hear more about this. The object is to penetrate the bureaucratic barriers in the agencies themselves that have

frustrated Mr. Ganesan to date. Thank you for your attention and courtesy.

Sincerely,

Signed:// John W. Alvis
John W. Alvis

JWA/gpc

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Appendix G - Request to Combine

On June 26, 2003, Ganesan filed a Motion to Stay (pages 2G - 8G) asking the 5th Circuit Court to stay action of three cases he had presented to the U.S. District Court. He requested the 5th Circuit Court delay action until all three had been dealt with fully by the District Court.

The first two cases had already been heard by the USDC, and Ganesan had already appealed them to the 5th Circuit (the instant case is 5th Cir. No. 03-50519 and the second one is 5th Cir. No 03-50193).

The third case was then in the USDC (USDC No. 02-CV-00753) and has since been heard. Ganesan appealed the third case to the 5th Cir, No. 03-51120, and both Motion for Certificate of Appealability and Motion for Rehearing of same were denied.

Ganesan has previously filed a Writ of Certiorari in both the first (03-1383, denied June 1, 2004) and third cases (mailed May 26, 2004, but not yet docketed), and this petition is for the second case. In the interests of judicial efficiency and in accordance with Supreme Court Rules, Rule 27.3, Ganesan requests the Supreme Court consider hearing the two remaining cases together.

2G

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-50193

No. 03-50519

APPARAJAN GANESAN
Plaintiff - Appellant

v.

SUDHA VALLABHANENI; BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT

Defendants - Appellees in 03-50193

U.S. ATTORNEY, U.S. STATE DEPARTMENT, INTERNAL REVENUE SERVICE; BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT
Defendants – Appellees in 03-50519

MOTION TO STAY

1. Now comes appellant Apparajan Ganesan and states as follows.

2. Defendant Vallabhaneni fraudulently stopped Ganesan's business payments and this lead directly to Ganesan's bankruptcy. These matters are detailed to this case in plaintiff's Appellate Brief, filed May 12, 2003.

3. Defendant Vallabhaneni falsified declarations to the Bureau of Immigration and Customs Enforcement (at the time, called the Immigration and Naturalization Service), on passport declarations, on Federal tax forms to the Internal Revenue Service (IRS), on California state tax forms, on Texas automobile insurance forms, etc. During a six year period beginning March 1997, Ganesan obtained testimony of an IRS agent under the 100 mile state subpoena rule, met with the full problem solving team of the IRS including its criminal investigation section, and took the deposition of an IRS agent as part of the bankruptcy proceeding. Ganesan had been told repeatedly that he must exhaust his judicial remedies before seeking affirmative action through federal agencies. He did so both through state and federal courts, and he finally filed a Writ of Mandamus in this Cause No. (03-50193, USDC No. A:02-CV-00614-JN). The Writ of Mandamus asks the US District Court to order Federal agencies to take affirmative action against Ms. Vallabhaneni.

4. After some consideration, the District Court gave the Wirt of Mandamus a new number (USDC No. 03-CV-00030, Ganesan v. US Attorney, et al) [Attachment 1]. Then, on January 28, 2003, the District Court dismissed 02-CV-00614 (leading to its appeal to this Court). Subsequent to that dismissal, the US Attorney, a defendant in the Writ of Mandamus, used the dismissal of 02-CV-00614 to claim res judicata and preclusion based on that dismissal.

5. Prior to all of the above, beginning in mid 1997, Sudha Vallabhaneni, aided by her attorney Amy Wright, filed in a spurt of malicious charges against plaintiff Ganesan. They convinced Travis County to file six misdemeanor charges and the State to file two felony charges. At jury trial, Ganesan was found not guilty of all misdemeanor charges after 35 minutes of jury deliberation. In a separate jury trial,

Ganesan was found guilty of both felony charges, but one was overturned on appeal by the 3rd Court of Appeals of Texas. See Ganesan v. State 45 S.W.3d 197.

6. The remaining felony charge is on a 2254 petition, filed Nov. 27, 2002, in the US District Court, Western District of Texas (Case No. 02-CV-00753, Ganesan v. Cockrell). In this civil action, Ganesan demonstrates fundamental unfairness in his original trial and the infringement of important Constitutional rights. Ganesan expects a writ to issue as a matter of law, and he filed a rebuttal on April 7, 2003. He is awaiting a ruling. In the absence of a writ, Ganesan would likely file an appeal on 02-CV-00753 to the 5th Circuit.

7. All three civil cases (02-CV-00614, 02-CV-00753, and 03-CV-00030) primarily involve issues between Ganesan and Vallabhaneni, and these issues are "inextricably intertwined." Therefore, Ganesan believes that the interests of justice would best be served if all three cases were simultaneously reviewed by this Court. Such a review might also result in substantial judicial economy.

Relief Sought

8. Ganesan requests a stay in the two 5th Circuit cases until the US District Court rules on 02-CV-00753 and all relevant pleadings are filed. He requests the 5th Circuit review the cases together (two if the District Court rules in his favor 0n 02-CV-00753, all three otherwise)

9. 5th Circuit No	USDC No.	Parties
03-50193	02-CV-00614	Ganesan v. Vallabhaneni and Bureau of

03-50519	03-CV-00030	Immigration and Customs Enforcement Ganesan v. US Attorney, US State Department, Internal Revenue Service and Bureau of Immigration and Customs Enforcement
None yet	02-CV-00753	Ganesan v. Cockrell

Ganesan is not necessarily seeking a merger of the cases; he seeks only that they be reviewed together so that justice can be done.

Respectively Submitted,

Signed by:// Apparajan Ganesan
Apparajan Ganesan, Pro Se
TDC 904088

Address of Appellant:

Apparajan Ganesan
TDC #904088
Sander Estes Unit
1100 Hwy 1807
Venus, TX 76084

Note: Subsequent to this motion, in Paragraph 9, the third case became 03-51120, Ganesan v. Dretke

CERTIFICATE OF SERVICE

I certify that the above was been placed in the US Postal Service mail system to recipients at the addresses below on this 26th day of June, 2003.

Signed by:// Apparajan Ganesan
Apparajan Ganesan
TDC 904088

Address of Appellant:
Apparajan Ganesan
TDC #904088
Sander Estes Unit
1100 Hwy 1807
Venus, TX 76084

Recipients:

Office of the Clerk
Fifth Circuit, US Court of Appeals
600 Camp St.
New Orleans, LA 70130

Clerk, US District Court
Western District of Texas
200 W. 8th St.
Austin, TX 78701

Mr. Charles Herring, Jr.
(attorney for Ms. Vallabhaneni)
Herring & Irwin, L.L.P.
1105 W. 12th St.
Austin, TX 78703

Bureau of Immigration and
Customs Enforcement
8940 Four Winds Drive
San Antonio, TX 78239

U.S. State Department
Law Enforcement Division
4141 N. Sam Houston Pkwy. E #260
Houston, TX 77032

US Internal Revenue Service
Special Procedures Branch
SSAN 078-58-8917
Stop 5002 AUS
300 E. 8th St.
Austin, TX 78701

U.S. Attorney, Western Dist. of TX
601 NW Loop 410, Suite 600
San Antonio, TX 78216

US Attorney General
Attn: John Ashcroft
Constitution Ave. & 10th St., NW
Washington, DC 20530

Mr. James R. Smith
Asst. Attorney General
PO Box 12548
Austin, TX 78711-2548

Ms. Kathleen Andleman
Manager, Gen. Counsel Section
State of California
Franchise Tax Board, Legal Branch
PO Box 1720
Rancho Cordova, CA 95741-1720

Chief Judge Hon. Michael J. Creppy
Skyline Tower Building
5107 Leesburg Pike
Falls Church, VA 22041

Mr. John A. Dudeck, Jr.
US Department of Justice
Tax Division Appellate Section
Washington, DC 20044

Hon. Judge J. R. Nowlin &
Hon. Magistrate Stephan H. Capelle
US District Court
Western District of Texas
200 W. 8th St.
Austin, TX 78701

Ms. Ramona S. Notinger
US Department of Justice
Tax Division
717 N. Harwood, Suite 400
Dallas, TX 75201

Appendix H

Relevant U.S.C.A. (Footnotes omitted)

Immigration

Title 8. Aliens and Nationality
Chapter 12. Immigration and Nationality, Section 1227

(a) Classes of deportable aliens

Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

(3) Failure to register and falsification of documents

(B) Failure to register or falsification of documents

Any alien who at any time has been convicted -

(iii) of a violation of, or an attempt or a conspiracy to violate, section 1546 of title 18 (relating to fraud and misuse of visas, permits, and other entry documents), is deportable.

(C) Document fraud

(i) In general

An alien who is the subject of a final order for violation of section 1324c of this title is deportable.

Title 18. Crimes and Criminal Procedures
Section 1015. Naturalization, citizenship or alien registry

(a) Whoever knowingly makes any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States

relating to naturalization, citizenship, or registry of aliens; or

(b) Whoever knowingly, with intent to avoid any duty or liability imposed or required by law, denies that he has been naturalized or admitted to be a citizen, after having been so naturalized or admitted; or

(c) Whoever uses or attempts to use any certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship or other documentary evidence of naturalization or of citizenship, or any duplicate or copy thereof, knowing the same to have been procured by fraud or false evidence or without required appearance or hearing of the applicant in court or otherwise unlawfully obtained; or

(d) Whoever knowingly makes any false certificate, acknowledgment or statement concerning the appearance before him or the taking of an oath or affirmation or the signature, attestation or execution by any person with respect to any application, declaration, petition, affidavit, deposition, certificate of naturalization, certificate of citizenship or other paper or writing required or authorized by the laws relating to immigration, naturalization, citizenship, or registry of aliens; or

(e) Whoever knowingly makes any false statement or claim that he is, or at any time has been, a citizen or national of the United States, with the intent to obtain on behalf of himself, or any other person, any Federal or State benefit or service, or to engage unlawfully in employment in the United States; or

(f) Whoever knowingly makes any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election (including an initiative, recall, or referendum) -

Shall be fined under this title or imprisoned not more than five years, or both. Subsection (f) does not apply to an alien if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making the false statement or claim that he or she was a citizen of the United States.

Title 18. Crimes and Criminal Procedure
Section 1546. Fraud and misuse of visas, permits, and other documents

(a) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribe by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or

Whoever, except under direction of the Attorney General or the Commissioner of the Immigration and Naturalization Service, or other proper officer, knowingly possesses any blank permit, or engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of a plate designed for the printing of

permits, or makes any print, photograph, or impression in the likeness of any immigrant or nonimmigrant visa, permit or other document required for entry into the United States, or has in his possession a distinctive paper which has been adopted by the Attorney General or the Commissioner of the Immigration and Naturalization Service for the printing of such visas, permits, or documents; or

Whoever, when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity, or sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, such visa, permit, or other document, to any person not authorized by law to receive such document; or

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact -

Shall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the

case of the first or second such offense, if the offense was not committed to facility (FOOTNOTE 1) such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both. (FOOTNOTE 1) So in original. Probably should be "facilitate".

(b) Whoever uses -

(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,

(2) an identification document knowing (or having reason to know) that the document is false, or

(3) a false attestation, for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined under this title, imprisoned not more than 5 years, or both.

(c) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481). (FOOTNOTE 2) For purposes of this section, the term "State" means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States. (FOOTNOTE 2) See References in Text note below.

Tax

Title 18. Crimes and Criminal Procedures
Section 286. Conspiracy to defraud the Government with respect to claims

Whoever enters into any agreement, combination, or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim, shall be fined under this title or imprisoned not more than ten years, or both.

Title 18. Crimes and Criminal Procedures
Section 287. False, fictitious or fraudulent claims

Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years and shall be subject to a fine in the amount provided in this title.

Title 26. Internal Revenue Code
Section 7201. Attempt to evade or defeat tax

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

Title 26. Internal Revenue Code

Section 7203. Willful failure to file return, supply information, or pay tax

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25,000 ($100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure. In the case of a willful violation of any provision of section 6050I, the first sentence of this section shall be applied by substituting "felony" for "misdemeanor" and "5 years" for "1 year".

Title 26. Internal Revenue Code
Section 7205. Fraudulent withholding exemption certificate or failure to supply information

(a) Withholding on wages

Any individual required to supply information to his employer under section 3402 who willfully supplies false or fraudulent information, or who willfully fails to supply information thereunder which would require an increase in the tax to be withheld under section 3402, shall, in addition to any other penalty provided by law, upon

conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(b) Backup withholding on interest and dividends

If any individual willfully makes a false certification under paragraph (1) or (2)(C) of section 3406(d), then such individual shall, in addition to any other penalty provided by law, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both.

Title 26. Internal Revenue Code
Section 7206. Fraud and false statements

Any person who -

(1) Declaration under penalties of perjury

Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or

(2) Aid or assistance

Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; or

(3) Fraudulent bonds, permits, and entries

Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or procures the

same to be falsely or fraudulently executed, or advises, aids in, or connives at such execution thereof; or

(4) Removal or concealment with intent to defraud

Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by section 6331, with intent to evade or defeat the assessment or collection of any tax imposed by this title; or

(5) Compromises and closing agreements

In connection with any compromise under section 7122, or offer of such compromise, or in connection with any closing agreement under section 7121, or offer to enter into any such agreement, willfully -

(A) Concealment of property

Conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or

(B) Withholding, falsifying, and destroying records

Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax; shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution.

Title 26. Internal Revenue Code
Section 7207. Fraudulent returns, statements, or other documents

Any person who willfully delivers or discloses to the Secretary any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than $10,000 ($50,000 in the case of a corporation), or imprisoned not more than 1 year, or both. Any person required pursuant to subsection (b) of section 6047 or pursuant to subsection (d) of section 6104 to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than $10,000 ($50,000 in the case of a corporation), or imprisoned not more than 1 year, or both.

Other

Title 18. Crimes and Criminal Procedures
Section 152. Concealment of assets; false oaths and claims; bribery

A person who -

(1) knowingly and fraudulently conceals from a custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or, in connection with a case under title 11, from creditors or the United States Trustee, any property belonging to the estate of a debtor;

(2) knowingly and fraudulently makes a false oath or account in or in relation to any case under title 11;

(3) knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, in or in relation to any case under title 11;

(4) knowingly and fraudulently presents any false claim for proof against the estate of a debtor, or uses any such claim in any case under title 11, in a personal capacity or as or through an agent, proxy, or attorney;

(5) knowingly and fraudulently receives any material amount of property from a debtor after the filing of a case under title 11, with intent to defeat the provisions of title 11;

(6) knowingly and fraudulently gives, offers, receives, or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof for acting or forbearing to act in any case under title 11;

(7) in a personal capacity or as an agent or officer of any person or corporation, in contemplation of a case under title 11 by or against the person or any other person or corporation, or with intent to defeat the provisions of title 11, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation;

(8) after the filing of a case under title 11 or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor; or

(9) after the filing of a case under title 11, knowingly and fraudulently withholds from a custodian, trustee, marshal, or other officer of the court or a United States Trustee entitled to its possession, any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor, shall be fined under this title, imprisoned not more than 5 years, or both.

Title 18. Crimes and Criminal Procedures
Section 1035. False statements relating to health care matters

(a) Whoever, in any matter involving a health care benefit program, knowingly and willfully -
(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or
(2) makes any materially false, fictitious, or fraudulent statements or representations, or makes or uses any materially false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 5 years, or both.
(b) As used in this section, the term "health care benefit program" has the meaning given such term in section 24(b) of this title.

Title 18. Crimes and Criminal Procedures
Section 1542. False statement in application and use of passport

Whoever willfully and knowingly makes any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws; or

Whoever willfully and knowingly uses or attempts to use, or furnishes to another for use any passport the issue of which was secured in any way by reason of any false statement -

Shall be fined under this title, imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facility (FOOTNOTE 1) such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both. (FOOTNOTE 1) So in original. Probably should be "facilitate".

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Apparajan Ganesan Plaintiff	§	
v.	§	CASE NUMBER: ~~A:02-CA-00614-JN~~
	§	**A:03-CA-30-JN**
U.S. Attorney Defendant	§	**New number assigned by District Court**
Immigration and Naturalization Service Defendant	§	
U.S. State Department Defendant	§	
Internal Revenue Service Defendant	§	

IN RE APPARAJAN GANESAN

Now comes plaintiff Apparajan Ganesan and states as follows:

Introduction

Sudha Vallabhaneni is an Indian citizen with a green card (A 07 077 8592), an Indian Passport (x725212, new; U839285 old), and a U.S. Social Security No. 587-63-8054. Ms. Vallabhaneni cohabited with relator Ganesan (a U.S.

citizen) starting Feb. 23, 1995, separating many times, and finally separating in Sept. of 1996.

Ms. Vallabhaneni brought an action of common law marriage and divorce in the 353rd Judicial District Court of Travis County in Sept. 1996. Ganesan contested the common law marriage claim and the case went to jury on Sept. 13, 1997.

Issues and Facts

In the ensuing trial, U.S. Immigration and Naturalization service agent Rod Reyes (testimony and exhibits attached), represented by a Deputy U.S. Attorney testified that Ms. Vallabhaneni had identified herself as "single" on immigration documents in May-June 1995. Furthermore, Ms. Vallabhaneni admitted to renewing her Passport with the Indian Consulate in Houston as a "single" in May 1996, three months before her final separation and institution of her lawsuit. At trial, the Indian Consulate claimed sovereign immunity and refused to answer a Travis County Court order to respond.

In addition, Ms. Vallabhaneni filed her income tax forms as a "single," did not file for a name change, never entered into any joint bank accounts with relator, and denied Ganesan health benefits from her employer as an unmarried partner, while claiming to be a traditional Indian woman (see attached affidavit by Ganesan).

Allegation of abuse crept into the trial without formal charges, resulting in a sympathetic jury affirming a common law marriage starting on Feb. 23, 1995 (see attached interlocutory decree from jury trial, Appellate Court decision, and Supreme Court denial).

Ganesan lost the ability to productize a computer chip he had just completed, and he filed a Chapter 7 Bankruptcy in Jan. 1998 (U.S. Western District, Austin Division, Case No. 98-10295-FM-7). Ganesan was accused of felony actions of solicitation for murder of Ms. Vallabhaneni and her attorney Amy Wright. He was convicted on the felony counts on Dec. 20, 1999 and sentenced to 10 years in TDCJ. Ganesan appealed, and one of the two counts was reversed in Feb, 2001 (Ganesan v. State 45 S.W.3d 197). He is in the writ process on the remaining count. Ganesan was also bench warranted, and the County tried misdemeanor allegations to jury on July 5, 2001. The jury found him "not guilty" in less than 35 minutes (Travis County Court III, Judge David Crain, Case No. 492428). Ganesan asserts his innocence on the one remaining count and is continuing with appropriate legal processes (Ganesan v. Cockrell A:02-CA-753-JN).

Ganesan also appealed the common law ruling to the Texas Supreme Court (Ganesan v. Vallabhaneni 03-01-00288-CV) where the verdict was affirmed. He is continuing with appropriate legal processes in this Court (Ganesan v. Vallabhaneni A:02-CA-614-JN).

Ms. Vallabhaneni and her attorney contend that her statements of being not married in various documents (immigration, Passport, visa, etc.,) go only toward the accumulation of evidence as to common law marriage or not (Estate of Gissel 734 S.W.2d 27, 31). This is a clear admission by them that Ms. Vallabhaneni lied in Federal documents. Ganesan differs and states that declaration in immigration and passport documents are a matter of law and cannot be viewed as just part of the preponderance of evidence claims. Ganesan claims that the lie was to the State Court in order to defraud him of his wealth.

Ganesan applies the five prong test per U.S. v. Maria Del Carmen Castillo Montemayor 712 F.2d 104. "Proof of five elements is essential to conviction under statute proscribing making of false statements in any matter within jurisdiction of department or agency of the United States: statement, falsity, materiality, specific intent, and agency jurisdiction.

Statement: Ms. Vallabhaneni stated in an immigration document signed on June 12, 1995 (she alleged in her suit that common law marriage to Ganesan commenced in Sept. 1994) that she was single, and she repeated the same claim in her Passport renewal forms with the Indian Consulate in Houston on or about May 1996. However, in a Texas court proceeding, she claimed to be married. One cannot claim to be married and single at the same time. Therefore, it is axiomatic that one of these two statements, made to government agencies, is a lie.

Falsity: She would have declared herself married on federal documents if she believed she was in a common law marriage.

Materiality: Ms. Vallabhaneni claimed, in Sept. 1996, to be in a common law marriage beginning Sept. 1994. This claim is clearly negated by the INS document she filed in June 1995 and passport forms in May 1996, and it is material to her fraudulent claim of common law marriage.

Specific Intent: The intent of the false statement of marriage was to defraud the estate of Ganesan, a moderately wealthy U.S. citizen.

Agency Jurisdiction: The INS, the U.S. Attorney's Office in San Antonio (Department of Justice), the IRS, and the U.S. State Department all have jurisdiction of matters

with respect to foreign citizens (U.S. v. Yum 796 F.2d 490; U.S. v. Wiggan 673 F.2d 145; and similar cases where similar infractions were dealt with).

This five prong test can be successfully applied to all the federal statutory violations referred to below.

Ganesan and his attorneys contacted the INS, U.S. Attorney's Office, the IRS, and the State Department many times in the ensuing four years (since Sept 1996) without success. As required, specific action has been requested of those agencies under

18 U.S.C.A. § 1546
18 U.S.C.A. § 1015
8 U.S.C.A. § 1227 (a)(3)(B)(iii)
8 U.S.C.A. § 1227 (a)(3)(C)(i)
18 U.S.C.A. § 286
18 U.S.C.A. § 287
26 U.S.C.A. § 7201, 7203, 7205, 7206, 7207
18 U.S.C.A. § 1542
18 U.S.C.A. § 1035
18 U.S.C.A. § 152
V.A.T.S. Insurance Code Art. 21.78 and 21.47

to prosecute and deport Ms. Vallabhaneni (see attached letters from J. Alvis and the plaintiff).

C. Why Writ Must Issue

Much immigration abuse could result if common law marriage claims were allowed in the same period when someone is declaring herself to be single in passport and immigration documents. In either event, a lie to government agencies has been told by Ms. Vallabhaneni, either to the Federal government or to the State of Texas.

Time and again the response from the federal agencies has been that they are busy on "other matters." After four years, this is a clear refusal to act. Meanwhile, Ganesan has lost a business opportunity valued at over $1 billion, has been incarcerated, has become bankrupt, and has had numerous patent opportunities disappear.

Given four years of inaction by the above mentioned agencies, Ganesan has no remedy remaining (Winfield v. Dogget 846 S.W.2d 920, Overton v. City of Austin 748 F.2d 941) other than this writ. Ganesan is not suggesting that this Court interfere with the workings of other agencies of the government. However, four years of inaction is clear testament that those branches of government have no intention of acting on his request. In so doing, those agencies have failed to protect Ganesan from the actions of an untruthful foreign national who has perpetrated statutory fraud. Therefore, Ganesan simply requests this Court in its role under 28 U.S.C.A. § 1361 to order those federal agencies to act with no further delay in accordance with their duties.

Ganesan notes that Persons v. Persons 666 S.W.2d 560 requires the Court to rule that Federal statements of "single" takes precedence over claims in State Court of being "married." However, regardless of how this Court were to rule on this issue (in Ganesan v. Vallabhaneni A:02-CA-614-JN, now pending), Ms. Vallabhaneni, aided by her lawyers, clearly lied to either the Federal government or to the State of Texas, since she took opposite side of the marriage issue with these two agencies. Therefore, this Court should not delay in ruling on this writ, since the merits of the writ are not dependant on the outcome of that case.

Plaintiff is well aware of the discretionary powers of the Attorney General and the various federal agencies involved.

(Alvidres Reyes v. Reno 981 F.Supp 1008, 180 F.3d 199). Plaintiff is also aware that Mandamus can only issue when the duty involved is mandatory and not discretionary.

Plaintiff asks the Court to take judicial note that Texas courts have shown wanton disregard of declarations in federal tax returns in determining issues of common law marriage for some time (Matters of Estate of Gissell 734 S.W.2d 27, 31; Winfield v. Renfro 821 S.W.2d 640). In this particular case, in addition, the Texas courts showed a reckless abandon of the principle that "federal law supercedes state law" in determining the marital status of Sudha Vallabhaneni.

Under the circumstances, Ganesan assert that a duty is owed to him by the federal agencies involved, as in 28 U.S.C. § 1361. In fact, Mandamus must issue to clear abuse of discretion or violation of duty imposed by law. Plaintiff has established a clear right to the relief, a clear duty to him, and a lack of other remedy (Davis v. Fechtel 150 F.3d 486; In Re Redstone 118 F.3d 1032; Green v. Heckler 742 F.2d 237; Turner v. Weinberger 728 F.2d 751, In Re Session 672 F.2d 564; Community Future Trading v. Perf. Capital 664 F.2d 316; City of Seabrook v. Costle 659 F.2d 1371; Sheehan v. Army Airforce 619 F.2d 1132).

Plaintiff also notes that federal Mandamus relief is granted not as a right but as a matter of judicial discretion (in Re Occidental Petroleum 217 F.3d 293; U.S. v. Denson 603 F.2d 1143; Miller v. Heckler 601 F.Supp 1471; Alford v. Sullivan 751 F.Supp 1232).

D. Relief Sought

Ganesan requests the Court by writ to require federal agencies to take affirmative action.

Ganesan requests the Court to order the U.S. Attorney's Office to prosecute Sudha Vallabhaneni under:

18 U.S.C.A. § 1546
18 U.S.C.A. § 1015
8 U.S.C.A. § 1227 (a)(3)(B)(iii)
8 U.S.C.A. § 1227 (a)(3)(C)(i)
18 U.S.C.A. § 286
18 U.S.C.A. § 287
26 U.S.C.A. § 7201, 7203, 7205, 7206, 7207
18 U.S.C.A. § 1542
18 U.S.C.A. § 1035
18 U.S.C.A. § 152

These statutes make it a felony with deportation as a penalty for a non-citizen to lie on government documents.

Ganesan requests the Court to order the Immigration and Naturalization Service to prosecute Ms. Vallabhaneni under

18 U.S.C.A. § 1546
18 U.S.C.A. § 1015
8 U.S.C.A. § 1227 (a)(3)(B)(iii)
8 U.S.C.A. § 1227 (a)(3)(C)(i)

and deport her.

Ganesan requests the Court to order the Internal Revenue Service to prosecute Ms. Vallabhaneni for tax fraud under

18 U.S.C.A. § 286
18 U.S.C.A. § 287
26 U.S.C.A. § 7201, 7203, 7205, 7206, 7207

and deport her.

Ganesan requests the Court to order the U.S. State Department to confirm Ms. Vallabhaneni's Passport marital

state in May 1996 with the Indian Consulate in Houston, and to take appropriate action of fraud and deportation action against Ms. Vallabhaneni.

Ganesan asks the aid of the U.S. Attorney's Office in prosecuting all parties concerned who profited by perpetrating this statutory fraud.

Signed on this day 7th January, 20 03

Signed by:/Apparajan Ganesan
Apparajan Ganesan

Relator:

Apparajan Ganesan
(Texas Dept. of Correction inmate #904088)
Physical Address:
Sander Estes Unit
1100 Hwy 1807
Venus, TX 76084
Mailing Address:
C/O Douglas G. Marsh (caretaker for Apparajan Ganesan)
1031 Graham St.
Bethlehem, PA, 18015

Respondants:

Immigration and Naturalization Service
8940 Four Winds Drive
San Antonio, TX 78239

U.S. State Department
Law Enforcement Division

4141 N. Sam Houston Pkwy. E #260
Houston, TX 77032

U.S. Attorney
Western District of Texas
601 NW Loop 410, Suite 600
San Antonio, TX 78216

U.S. Internal Revenue Service
Special Procedures Branch
SSAN 078-58-8917
Stop 5002 AUS
300 . 8th St.
Austin, TX 78701

CITES AND CODES

1. U.S. Western District, Austin Division, Case No. 98-10295-FM-7
2. Ganesan v. State 45 S.W.3d 197
3. Ganesan v. Travis County, Case No. 492428
4. Ganesan v. Cockrell A:02-CA-753-JN
5. Ganesan v. Vallabhaneni 3rd Judicial District of Texas, 03-01-00288-CV
6. Ganesan v. Vallabhaneni A:02-CA-618-JN
7. Matter of Estate of Gissel 734 S.W.2d 27, 31
8. U.S. v. Maria Del Castillo Montemayor 712 F.2d 104
9. U.S. v. Yum 776 F.2d 490
10. U.S. v. Wiggan 673 F.2d 145
11. 18 U.S.C.A. § 1546
12. 18 U.S.C.A. § 1015
13. 8 U.S.C.A. § 1227 (a)(3)(B)(iii)
14. 8 U.S.C.A. § 1227 (a)(3)(C)(i)
15. 18 U.S.C.A. § 286
16. 18 U.S.C.A. § 287
17. 26 U.S.C.A. § 7201, 7203, 7205, 7206, 7207
18. 18 U.S.C.A. § 1542
19. 18 U.S.C.A. § 1035
20. 18 U.S.C.A. § 152
21. V.A.T.S. Insurance Code Art. 21.78 and 21.47
22. Winfield v. Dogget 846 S.W.2d 920
23. Overton v. City of Austin 748 F.2d 941
24. 28 U.S.C.A. § 1361
25. City of Shore Acres v. State 582 S.W.2d 211
26. Persons v. Persons 666 S.W.2d 560
27. Alvidres Reyes v. Reno 981 F.Supp 1008, 180 F.3d 199
28. Winfield v. Renfro 821 S.W.2d 640
29. Davis v. Fechtel 150 F.3d 486
30. In Re Redstone 118 F.3d 1032
31. Green v. Heckler 742 F.2d 237

32. Turner v. Weinberger 728 F.2d 751
33. In Re Session 672 F.2d 564
34. Community Future Trading v. Perf. Capital 664 F.2d 316
35. City of Seabrook v. Costle 659 F.2d 1371
36. Sheehan v. Army Airforce 619 F.2d 1132
37. In Re Occidental Petroleum 217 F.3d 293
38. U.S. v. Denson 603 F.2d 1143
39. Miller v. Heckler 601 F.Supp 1471
40. Alford v. Sullivan 751 F.Supp 1232

Index of Attachments

1. Testimony of INS agent Ron Reyes, with exhibits
2. Affidavit by Ganesan
3. Letter to US Attorney Pierce from Attorney John Alvis
4. Letter to US Attorney Blagg from plaintiff Ganesan
5. Letter to Judge Creepy from plaintiff Ganesan
6. Interlocutory decree of Common Law Marriage,353rd District Court, Travis County, Texas
7. Final Decree of Divorce, 353rd District Court, Travis County, Texas
8. Appellate Court's Decision, 3rd District, Austin, Texas
9. Texas Supreme Court docket report showing denial
10. Proposed ORDERs OF THE COURT

For the Writ of Certiorari, the Attachments have been intentionally omitted.

NOTICE
INMATE NOTARY PUBLIC SERVICE

NOTICE
NOTARY PUBLIC SERVICE DENIAL

UNSWAORN DECLARATION

The above three documents included in the Petition have been intentionally omitted in this Writ of Certiorai

CERTIFICATE OF SERVICE

I certify under penalty of perjury that the forgoing is true and correct, and that these documents were placed in the U.S. Postal System on 14th day of February, 20 03
Signed this 14th day of February, 20 03.

Signed by:/Apparajan Ganesan
Signature of Plaintiff

Physical Address of Plaintiff
Apparajan Ganesan, TDC 904088
Sanders Estes Unit
1100 Hwy 1807
Venus, TX 76084

Mailing Address of Plaintiff
Apparajan Ganesan
C/O Douglas G. Marsh
1031 Graham St.
Bethlehem, PA 18015

Respondents:

U.S. Attorney
601 NW Loop 410, Suite 600
San Antonio, TX 78216

Immigration and Naturalization Service
8940 Four Winds Drive
San Antonio, TX 78239

U.S. State Department

Law Enforcement Division
4141 N. Sam Houston Pkwy. E #260
Houston, TX 77032

US Internal Revenue Service
Special Procedures Branch
SSAN 078-58-8917
Stop 5002 AUS
300 E. 8th St.
Austin, TX 78701

Others Serviced:

Chief Judge Hon. Michael J. Creppy
Skyline Tower Building
5107 Leesburg Pike
Falls Church, VA 22041

U.S. Attorney General
Attn: John Ashcroft
Ave. & 10th St, NW
Washington, D.C. 20530

Sudha Vallabhaneni
C/O William D. Power
(attorney for Vallabhaneni)
2206 Lake Austin Blvd
Austin, TX 78739

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-50519
USDC No. 03-CV-00030

APPARAJAN GANESAN
Plaintiff - Appellant

v.

U.S. ATTORNEY; BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT; U. S. STATE DEPARTMENT; INTERNAL REVENUE SERVICE

Defendants - Appellees

PETITION FOR PANEL REHEARING

Now comes Appellant Apparajan Ganesan and files the attached Petition for Panel Rehearing in the above referenced Cause No. This petition was originally mailed February 19, 2004 as a petition for En Banc Rehearing. However, per a letter dated February 23, 2004 from the 5th Circuit Clerk to the Appellant, it is being resubmitted and changed to Panel Rehearing since it addresses errors in misapplication of precedent.

Apparajan Ganesan
TDCJ # 904088
Sanders Estes Unit
1100 Hwy 1807
Venus, TX 76084

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B. U.S. District Court's Order
C. Vallabhaneni's declaration to the INS and INS Agent's trial court testimony regarding same
D. Alvis's letter to U.S. Attorney
E. Ganesan's letter to Judge Creepy

Page number here and in the list of cites are as in the original petition. They do NOT correspond to the pages in this reprint for the Writ of Certiorari.

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8. *Witter v. INS*, 113 F.3d 549, 552-553	3
9. *Yick Woo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064 (1886)	2

Related Cases

1. Ganesan v. Vallabhaneni, et al., 03-50193, 5th Circuit

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-50519

APPARAJAN GANESAN
Plaintiff - Appellant

v.

UNITED STATES ATTORNEY, UNITED STATES STATE DEPARTMENT, INTERNAL REVENUE SERVICE, BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT
Defendants - Appellees

PETITION FOR PANEL REHEARING

Now comes Appellant Apparajan Ganesan and states as follows:

This Court's Order in the above case (Attachment A), filed on January 12, 2004, was received by Ganesan on January 22, 2004. The Order affirms the District Court Order (Attachment B).

As per Rule 40(a)(1), since an agency of the United States is a party to these proceedings, any party may seek a rehearing within 45 days after entry of judgment. Ganesan seeks such a rehearing.

Court opines that "Mandamus is not available to review the discretionary act of officials" per *Giddings v. Chandler*, 979 F.2d 1104, 1108. However, Court has not opined why

such discretion is not discriminatory and is not in violation of the equal protection of laws guaranteed by the Constitution, given that the Federal agencies involved have aggressively prosecuted cases involving similar and lesser infractions (Appellate Brief pages 28-29; Reply brief pages 2, 3, 6) per *Yick Woo v. Hopkins*, 6 S.Ct. 1064 (1886).

The Supreme Court set the bar high for questioning the discretionary power of a prosecutor in initiating criminal proceedings, but it did not grant them exception from judicial review, particularly in the context of an allegation of violation of equal protection (*U.S. v. Armstrong*, 116 S.Ct. 1480-1487, Reply Brief page 3). The cummulation of violating twelve or more federal statutes in the instant case by Vallabhaneni (one example is presented in Attachment C) easily surpasses any threshold to judicial review of prosecutorial discretion.

Alvidres-Reyes v. Reno, 180 F.3d 199, 205 **narrowly** reserves discretion to commencement, adjudication, and removal proceedings. Further, *Alvidres-Reyes* **specifically notes** the many other actions a federal agency could and should take, which are subject to judicial review (Appellate Brief pages 26-27, *Reno v. American-Arab Committee*, 119 S.Ct. 936, 943).

This Court, in *Giddings v. Chandler*, 979 F.2d 1104, 1110, in the context of an **alien**, opined that duty on the part of a federal agency does not equate to a duty owed to that **alien**. But in the instant case, this Court is making an extraordinary quantum leap by extending that lack of duty to a **U.S. citizen** who has protected rights under the Constitution and who has **every right** to expect the affirmative enforcement of Federal laws as mandated by

Congress along with protection of his liberty and property offered by such Congressional intent.

Ganesan noted the **extraordinary** delay in action by the federal agencies and the resulting damages in his Appellate Brief and Reply Brief (pages 2 and 3). Attachments D and E are examples of two notifications by Ganesan and his counsel that were ignored by the federal agencies. Ganesan brings the following cites to the attention of the Court:

> A fundamental infirmity in the agency proceedings justifying [mandamus] type of relief may include the situation where an agency egregiously delays resolution of a matter (*U.S. v. Wiggins*, 50 F.Supp.2d 512, 515).
>
> When considering whether agency delay has been egregious as to warrant mandamus under the Administrative Procedure Act, the district court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.
>
> When applying the rule of reason to determining whether an agency has been so egregious as to warrant mandamus under the APA, the district court should ascertain the length of time that has elapsed since the agency came under a duty to act and should evaluate any prospect of early completion.
>
> The nature of the delay and the prejudice resulting from the delay by the [agency] ... in completing ... weighed in favor of issuance of mandamus; the delay in processing the petition ... rights, wealth and welfare ....
>
> The nature of the delay and the prejudice resulting from the delay are analyzed together when

> determining whether agency delay is so egregious as to warrant mandamus under the administrative Procedures Act (APA). *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 180 F.Supp.2d 130.

That common law marriage claims are "fruitful sources of perjury and fraud" has been noted by many courts (most recently by *Staudemayer v. Staudemayer*, 714 A.2d 1016, 1019 PA (1998). This Court, by its ruling in the instant case, has put a judicial stamp of approval on such fraud and has opened the flood gates to another loophole to immigration fraud and "get rich quick" schemes by aliens.

This Court's ruling is in sharp contrast to the previous ruling by it on the issue of Texas common law marriage in *Witter v. INS*, 113 F.3d 549, 552-553 (Appellate Brief page 28). The only difference is that in *Witter* the plaintiff is the INS (now BICE) aggressively arguing for deportation. The Court seems to have a different standard for a federal agency than for a private citizen when it comes to a fraudulent common law marriage claim. Further, the Court appears to have crossed all lines of reasonable expectations in giving deference to "agency interpretation of its rules."

As Ganesan noted in his earlier pleadings, he takes exception to any reference to Ms. Vallabhaneni as his "ex-wife" and once again notes that his complaints to federal agencies were made long before any determination by state courts that she was his common law wife.

Ganesan notes for the record that this Court, in affirming the verdict of the District Court, did not affirm the "preclusionary" reasoning.

For the above stated reasons, Ganesan requests this court to en banc reconsider its opinion. Pro se litigant Ganesan prays for all the remedy available under the law.

LIST OF ATTACHMENTS

A. 5th Circuits Court's Order in this case.
B. U.S. District Court's Order
C. Vallabhaneni's declaration to the INS and INS Agent's trial court testimony regarding same
D. Alvis's letter to U.S. Attorney
E. Ganesan's letter to Judge Creepy

For this Writ of Certiorari, Attachments have been intentionally omitted

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Respectfully Submitted,

Signed by: /Apparajan Ganesan
Apparajan Ganesan, Pro Se

TDC 904088

Address of Appellant:
Sanders Estes Unit
1100 Hwy. 1807
Venus, TX 76084

CERTIFICATE OF SERVICE

I certify that the above was been placed in the US Postal Service mail system to recipients at the addresses below on this 8th day of March, 2004.

Signed by:/Apparajan Ganesan
Apparajan Ganesan
TDC 904088

Address of Appellant:
Apparajan Ganesan
TDC #904088
Sanders Estes Unit
1100 Hwy. 1807
Venus, TX 76084

Recipients:

Office of the Clerk
Fifth Circuit, US Court of Appeals
600 Camp St.
New Orleans, LA 70130

Mr. John F. Paniszczyn
U.S. Attorney, Western Dist. of TX
601 NW Loop 410, Suite 600
San Antonio, TX 78216

US Attorney General
Attn: John Ashcroft
Constitution Ave. & 10th St., NW
Washington, DC 20530

Mr. Charles Herring, Jr.
(attorney for Ms. Vallabhaneni)
& Irwin, L.L.P.
1105 W. 12th St.
Austin, TX 78703

Hon. Michael J. Creepy
Chief Immigration Judge
Skyline Tower Bldg.
5107 Leesburg Pike
Falls Church, VA 22041

Ms. Kathleen Andleman
Manager, Gen. Counsel Section
State of California
Franchise Tax Board, Legal Branch
PO Box 1720
Rancho Cordova, CA 95741-1720

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Appendix K – Acknowledgement

I'd like to thank Mr. Jon Alvis and Mr. Bill McNeal for introducing me to the Writ of Mandamus, its history and usage, its watchdog role in federal law enforcement, and its application to preventing perjury and fraud in common law marriage claims.

My sincere thanks to the hundreds of inmates who gave their tireless energies in doing the research for this case (Mr. Lucio, Swanson, Shinault, and Justice in particular); to the unknown inmate who pointed out that a federal agent's sworn duty is to uphold the \constitution and the laws of our land, over and above obeying the President, Attorney General, and / or other superiors (*Swate v. Taylor*, 12 F.Supp.2d 591).

To the many friends who egged me on to expose the callousness of our federal bureaucracy toward rulings of the Supreme Court.

Last but not least to my friend Doug Marsh for his help with many rewrites, printing, mailing, etc.